

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

4 UNI TED STATES OF AMERI CA,) Docket No. CR05-5828FDB
5 Plaintiff,) Tacoma, Washington
6 vs.) February 25, 2008
7 BRI ANA WATERS,) VOLUME 10
8 Defendant.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE FRANKLIN D. BURGESS
SENIOR UNITED STATES DISTRICT COURT JUDGE, and a jury.

APPEARANCES:

For the Plaintiff: MARK N. BARTLETT
ANDREW C. FRIDEMAN
Assistant United States Attorney
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271

For the Defendant: ROBERT BLOOM
Attorney at Law
3355 Richmond Boulevard
Oakland, California 94611

NEIL M. FOX
Cohen & Laria
1008 Western Ave., Suite 302
Seattle, Washington 98104

Court Reporter: Teri Hendrix
Union Station Courthouse, Rm 3130
1717 Pacific Avenue
Tacoma, Washington 98402
(253) 882-3831

25 Proceedings recorded by mechanical stenography, transcript produced by Reporter on computer.

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1 MONDAY, FEBRUARY 25, 2008 - 8:50 A.M.

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3 (Jury not present.)

4 THE CLERK: This is in the matter of United States of
5 America versus Briana Waters, CR05-5828FDB.

6 Counsel, please make an appearance for the record.

7 MR. FRIEDMAN: Good morning, Your Honor, Andrew
8 Friedman and Mark Bartlett for the United States. Ted Halla
9 is here also.

10 MR. FOX: Good morning, Neil Fox and Robert Bloom and
11 Ms. Waters is present.

12 THE COURT: All right. This morning it's been
13 brought to my attention that two motions have been filed. One
14 is to strike some evidence. I am not going to deal with that
15 one at this time, because I think there's time to deal with
16 that.

17 I want to deal with the one that the government has filed
18 in limine, what is identified as character witnesses, and talk
19 about that. But the motion seems to be saying that they
20 haven't been provided, I guess, information to know what it is
21 these folks are going to talk about or whatever, so they seem
22 to be guessing as to it being character, I guess.

23 MR. FRIEDMAN: It is. I mean, we are assuming that
24 they are being offered to show nonviolence, that that's the
25 character trait. But what we are really doing is objecting to

1 the number of witnesses that are going to be called on this
2 point. There's basically nine or ten listed for today. This
3 is probably just the beginning of the list. And under Ninth
4 Circuit case law this is going to be very repetitive evidence.
5 It's going to be cumulative, and it's going to be wasteful of
6 the court's time and the jury's, and we are asking for a
7 limitation.

8 THE COURT: I understand what you are saying. Until
9 I know what they are saying and how long are these witnesses
10 and what all do they intend to go into, whether we are talking
11 the difference between character and reputation and all those
12 things.

13 MR. FOX: Good morning, Your Honor. A couple of
14 different things. First off, I would note that many of the
15 witnesses that we've endorsed, the government has already
16 interviewed, and there are 302 reports dealing with many of
17 those witnesses.

18 But some of the witnesses are going to be pure character
19 witnesses, you know, reputation for a person and character
20 trait. But some of the other witnesses are going to be
21 dealing with Ms. Waters' life over the period of the time
22 charged in the indictment for the conspiracy charge.

23 Now, the government has spent a lot of time trying to make
24 innuendos that Ms. Waters somehow was part of this vast
25 conspiracy that supports blowing up McDonald's or whatever,

1 and we have to rebut that by showing that during the relevant
2 time period that's charged in the conspiracy count, that
3 wasn't what she was doing. She was doing things completely
4 opposite to that.

5 It's the government that kind of raised the specter, both
6 through the length of the conspiracy charge. So Ms. Waters
7 really has to account for what she was doing during the
8 five-year period of time. And many of these witnesses are
9 fact witnesses, in that sense, who are going to say that
10 Ms. Waters wasn't the type of person that was out meeting with
11 coconspirators and book clubs, talking about burning down
12 McDonald's or Disney and or anything like that. So they are
13 fact witnesses.

14 In terms of the number of witnesses, there are different
15 parts of Ms. Waters' life that these different witnesses can
16 speak to.

17 So some people know her as a violin player, some people
18 know her as a nanny, some people know her from the Watch
19 Mountain campaign.

20 So, that's the reason why there are quite a number of
21 these witnesses.

22 The government has spent a lot of time in this trial
23 bringing up information -- technical information about fires
24 that took place at locations that are very remote to the
25 events charged against Ms. Waters. They brought in witnesses

1 to talk about Superior Lumber Company and Cavel West.

2 And I guess we didn't object to the government putting on
3 its case, and we would expect that we should be able to put on
4 our case in the way that we feel is necessary.

5 So, you know, we are not talking about spending weeks and
6 weeks bringing in these types of witnesses. I mean, these are
7 all witnesses that are probably going to be on and off, you
8 know, in an hour or so.

9 So I don't think that we are going to delay anything. If
10 anything, our case is going to be considerably shorter than
11 the case that the government put on.

12 But many of these people are fact witnesses who are going
13 to testify that Briana Waters was not the person who the
14 government is trying to paint. It does try into the motion I
15 filed about the inflammatory nature of some of the materials
16 off the website and some of the materials from Ms. Kolar's
17 folder. That's not Briana Waters, and we have to rebut that.

18 Thank you.

19 THE COURT: Mr. Friedman.

20 MR. FRIEDMAN: Ms. Waters has not offered any alibi,
21 and so these are not -- these are classic character witnesses.
22 They are really just going to talk about what kind of person
23 she was. None of them are going to say she was busy doing
24 something else or identify where she was at any particular
25 time at any specific point.

1 So their testimony is not fact testimony that's
2 inconsistent with her guilt in this case, it really is
3 character evidence masquerading as something else, perhaps,
4 but character evidence about what kind of person she is, and
5 the end result is it's cumulative, it's redundant, and the
6 court should not allow it.

7 THE COURT: I don't know how I can weigh it in the
8 way that you are saying at this point in time. They have a
9 right to put on -- well, I guess the distinction has got to be
10 made between character, and that's where it gets a little bit
11 afiel d as to how far you go on that character evidence. As I
12 understand it, it's really trying to tell a person, someone
13 else trying to describe a person, what this person is, I
14 guess, and I don't know how they can do that so much. But
15 they can't talk about her reputation because, as I read this
16 thing, the reputation here that's pertinent is a violent
17 person, nonviolent type conduct.

18 And then you say the rest of it is fact. If it's fact
19 evidence, then it's fact evidence, and they have a right to
20 put that on.

21 So I have no way of knowing exactly what that is, other
22 than to say it's a fact that she was a teacher and she taught
23 so many days and she did this and she did that. Well, then
24 that's going far afiel d when the whole thing is to meet what
25 they have accused her of; they said she's a violent person.

1 She should have a right to show some evidence that will go
2 against the nonviolent aspect.

3 MR. FRIEDMAN: For the record, could we ask the
4 defense to clarify what traits of character they are actually
5 intending to put into issue by trait --

6 THE COURT: Well, I have asked them to do that, to
7 tell the gist of the testimony. I don't know why -- I can't
8 tell from what I see here.

9 MR. FOX: The character for her -- her reputation for
10 nonviolence.

11 But to respond to something that Mr. Friedman said, that
12 we haven't offered evidence of alibi, the conspiracy charge
13 stretches on for five years, and to the extent that we have to
14 show what Ms. Waters was doing during that five-year period of
15 time, I mean, I guess it's alibi, because it's in the sense
16 that they have alleged that she was doing certain things for a
17 five-year period of time. We are trying to show that she
18 wasn't doing that for a five-year period of time.

19 I mean, it's not that --

20 THE COURT: Somewhat they are saying in terms of the
21 overall conspiracy, but on the other hand, there's been
22 testimony here that she wasn't involved in some of the things.
23 She wasn't even around, nobody knew anything about her. So I
24 don't know if it connects quite the way you are saying.

25 But it doesn't say that -- for the jury to determine what

1 part or what time she got maybe invited into the conspiracy or
2 whatever. I can't answer those. But if you are presenting
3 fact information, that's one thing.

4 If it goes as to painting a picture or trying to describe
5 her as a person under what I consider to be character, then
6 that may be taking another place, but what they know about her
7 reputation in the community for this, that, and the other
8 thing, that's one thing.

9 MR. FOX: Okay.

10 THE COURT: And that's about the best parameter I can
11 give you.

12 Like I mentioned about this other, that deals with the
13 components of Exhibit -- two exhibits, 402 and 612. I will
14 deal with that at another time because that's not going to
15 come up right now.

16 Okay, so are we going to see if we've got a jury here and
17 then start?

18 I believe we have Mr. Halla?

19 MR. FREEMAN: We did, Your Honor.

20 THE COURT: Mr. Fox, are you ready to continue?

21 MR. FOX: Yes, Your Honor.

22 THE COURT: All right. I will have you retake the
23 witness chair.

24 (Jury present.)

25 THE COURT: All right. You may be seated.

1 Good morning. I hope you had a good weekend. We are
2 ready to go.

3 We left off with Mr. Fox.

4 | TED HALLA, previously called as a witness, duly sworn.

5 CROSS-EXAMINATION - CONTINUED

6 | BY MR. FOX:

7 | Q. Good morning, Agent Halla.

8 | A. Good morning.

9 Q. We left off way back on Friday talking about how you and
10 Mr. Friedman and Mr. Martin made a decision not to question
11 Ms. Kolar about the University of Washington after January 5,
12 2006 for a couple month, correct?

13 | A. Yes.

14 Q. I think you decided to let her memory improve over time,
15 right?

16 A. Well, we were going to do things like go through her
17 calendar and part of the drive down to Olympia was to see if
18 those type of things would help her remember things as far as
19 details concerning the arson.

20 Q. On January 6, 2006, you didn't ask her any questions about
21 the University of Washington?

22 A. That's correct.

23 Q. And then you had a number of other meetings with her
24 through January and February 2006?

25 A. That's correct.

1 **Q.** And again, during those meetings, you consciously did not
2 ask Ms. Kolar about Capitol Hill Girl's role in the University
3 of Washington fire?

4 **A.** Yes, not specifically.

5 **Q.** And you didn't ask her about Capitol Hill Girl's Punk
6 Boyfriend's role in the fire?

7 **A.** No, we did not ask Ms. Kolar about that.

8 **Q.** Now, you agree with me as an FBI agent you cannot get into
9 someone's head, you are not a mind reader?

10 **A.** I am not a mind reader.

11 **Q.** When Ms. Kolar says someone was at the fire at the
12 University of Washington apartment, she uses an alias, you
13 only have her words to know what she means, right?

14 **A.** Partially. I mean, we are in the room with her, so we are
15 watching her physical language, if you will, tone of her
16 voice, so there's different things that we can use to read if
17 something is being said in the state of speculation, that
18 there's something that's a very firm statement.

19 **Q.** Sure, but ultimately what she means by something, she has
20 to tell us that, right?

21 **A.** That's true. There's a degree of subjectivity in the
22 sense that we take as interviewers of what's being said. A
23 302 report is really a paraphrase account of what we
24 understand to have been said. It's not a transcript.

25 **Q.** Sure, sure, but ultimately it's up to Ms. Kolar to tell

1 everyone what she was thinking when she said a particular
2 name, correct?

3 **A.** That's correct.

4 **Q.** Now, at some point you testified that Ms. Kolar identified
5 the Punk Boyfriend of Capitol Hill Girl as someone named
6 Spencer Moen, MOEN; is that correct?

7 **A.** That's correct.

8 **Q.** Now, you don't have any personal knowledge when she
9 identified the Punk Boyfriend as Spencer Moen, it was the same
10 person she was referring to on December 16, right? You only
11 have what she said, sometime in January, right?

12 **A.** That's correct.

13 **Q.** Similarly, when Ms. Kolar identified Suzanne Savoie as
14 Capitol Hill Girl, you don't have any personal knowledge that
15 that was the same person that Kolar was speaking about on
16 December 16?

17 **A.** I understood that was the same person.

18 **Q.** That's what she told you in January, but December 16 you
19 weren't inside her head, you didn't know what she was thinking
20 when she said Capitol Hill Girl?

21 **A.** I wasn't inside her head, that's correct.

22 **Q.** Now, it's correct on direct you said Susan Savoie pled
23 guilty to the Jefferson Poplar Farm fire?

24 **A.** That's correct.

25 **Q.** And the Superior Lumber fire?

1 **A.** I believe that's correct.

2 **Q.** Now, isn't it true that Suzanne Savoie does not have a

3 father named Horace?

4 **A.** That's true. She does have a stepfather who was a

5 butcher.

6 **Q.** But his name was Randy Dong, right?

7 **A.** I don't personally have knowledge of that.

8 **Q.** But his name was not Horace?

9 **A.** It was not Horace.

10 **Q.** So the possibility is that Capitol Hill Girl might be

11 someone other than Susan Savoie, right?

12 **A.** At what point?

13 **Q.** Well, is it possible that Capitol Hill Girl -- that what

14 Ms. Kolar was thinking about Capitol Hill Girl in December was

15 someone other than Susan Savoie, despite what she said in

16 January?

17 **A.** That's possible.

18 **Q.** Now, during the course of January 2006, and February 2006,

19 you are still working on that written 302 report, right, from

20 December 16?

21 **A.** The report was not finalized until early February, yes.

22 **Q.** And I think that you testified that you and Agent Torres

23 produced it, kind of jointly, right?

24 **A.** That's correct. We, you know, we would pass it back and

25 forth and we were working through trying to make it as

1 accurate as possible.

2 Q. And at different points, you tried to reconcile

3 differences in your notes and his notes, right?

4 A. That's correct, there was a lot of confusion in some
5 portions of the interview.

6 Q. So, I think that you said on direct that your notes
7 reflected that Kolar on December 16 said that there was a car
8 used during the fire at the University of Washington, right?

9 A. That's what my notes say.

10 Q. I think you testified that Agent Torres' notes said there
11 was a car or van?

12 A. I believe that's what his notes say.

13 Q. So you wrote a report where you resolved this by stating
14 that a vehicle was used, right?

15 A. Yes, we did.

16 Q. So the final report, not finalized until February 2006,
17 didn't mention car or van, right?

18 A. That's correct.

19 Q. It kind of left it vague?

20 A. That's correct.

21 Q. Similarly, the five people that Jennifer Kolar listed as
22 being at the University of Washington fire, Capitol Hill Girl,
23 Crazy Dan, the Punk Boyfriend, of those five people, you did
24 not put the names Capitol Hill Girl, crazy Dan or Punk
25 Boyfriend in your final 302?

1 **A.** That's correct.

2 **Q.** In fact, the way that you wrote it out in the typed 302
3 was Kolar, Avalon and a few other individuals, right?

4 **A.** That's correct. Ms. Kolar was only sure about herself and
5 Avalon.

6 **Q.** I understand what you are saying. But the fact is, when
7 you wrote your report, you did not put into your final report,
8 Capitol Hill Girl, Crazy Dan or the Punk Boyfriend of Capitol
9 Hill Girl; is that correct?

10 **A.** That's correct.

11 **Q.** And the language, "Avalon and the others," that was your
12 language; that wasn't her language, right?

13 **A.** I don't know that it wasn't her language.

14 **Q.** Well, when she was saying -- let me rephrase that.

15 Let me ask you whether there were other versions of the
16 302 report that you produced in that December 16 meeting, that
17 actually listed Crazy Dan, the Punk Boyfriend and Capitol Hill
18 Girl?

19 **A.** There are not other versions, they are just drafts. My
20 computer, every time we do a spell check and we save it, that
21 technically would be a new draft. Every time I would pass it
22 to Agent Torres, and he made corrections and we saved it, that
23 would be a new draft.

24 There's not different versions.

25 I don't know whether an earlier draft contained the names

1 Capitol Hill Girl, Punk Boy or Crazy Dan. It may have, but I
2 have no independent memory of that.

3 Q. So what you are saying, in earlier draft, it's possible
4 that the draft said Capitol Hill Girl as being at the UW fire?

5 A. I believe it would have said that Kolar may have
6 speculated that those other names were involved in some
7 context with the arson.

8 Q. And ultimately the final version you took that out, right,
9 the final draft?

10 A. The final draft, we came to a point that Agent Torres and
11 I could agree on these points. There was a fair amount of
12 confusion over how we understood different things to have been
13 said and we created a report that we both could agree upon.

14 Q. Sure. Because Agent Torres notes actually had arson with
15 the five names listed?

16 A. I understand this to be true.

17 Q. So the final draft wasn't produced until you said mid
18 February 2006?

19 A. Early February, February 9. That sounds correct.

20 Q. In the intervening seven weeks between December 16 and
21 February 9, you met with Ms. Kolar a number of times, right?

22 A. That's correct.

23 Q. And you chose not to question her about the names she
24 speculated, as you say, were at the University of Washington
25 fire?

1 **A.** That's correct.

2 **Q.** Now, on February 4 I think you said you went with

3 Ms. Kolar to Olympia?

4 **A.** That's correct.

5 **Q.** And she taped you?

6 **A.** That's correct.

7 **Q.** And you were in the front seat taking notes?

8 **A.** Yes.

9 **Q.** Agent Torres was driving?

10 **A.** That's correct.

11 **Q.** Now, turn your attention to what's been marked for

12 identification as A-45. Pull that out.

13 **A.** This is a copy of my notes from February 4, 2006.

14 **Q.** Those are the notes you were writing as Ms. Kolar was

15 talking, right?

16 **A.** That's correct.

17 **Q.** At some point I think you said on direct that you were

18 talking about different people, characters and whatever?

19 **A.** We were.

20 **Q.** Again, you weren't questioning her about Capitol Hill Girl

21 at that point right?

22 **A.** No, we were not.

23 **Q.** You weren't questioning her about Crazy Dan or anything

24 like that?

25 **A.** No, we were not.

1 **Q.** Now, at some point, I think you said you showed Ms. Kolar,
2 or I don't know if you said this, but you showed Ms. Kolar
3 some photographs, right?

4 **A.** Yes, we did.

5 **Q.** You showed her a picture of Justin Solondz, right?

6 **A.** That's correct.

7 **Q.** And she didn't identify Mr. Solondz, right?

8 **A.** I'd have to refer to my report to be sure.

9 **Q.** Okay, do you want to take a look at what's been marked for
10 identification as A-43?

11 **A.** Yes, my report says she did not identify that picture of
12 him.

13 **Q.** I believe this has already been admitted, this is Exhibit
14 115-A. That's Justin Solondz, right?

15 **A.** Yes, it is.

16 **Q.** And you actually got this picture from the Department of
17 Licensing, right?

18 **A.** Yes, this was, I believe a 2002 photograph on his
19 Washington driver's license.

20 **Q.** When you got this from the Washington Department of
21 Licensing, Mr. Solondz' signature is at the bottom of this
22 picture isn't it?

23 **A.** It probably is depending on how I got it.

24 **Q.** This picture differs from some of the other pictures we've
25 seen of Mr. Solondz?

1 **A.** We've seen him with long hair, yes.

2 **Q.** I guess my question is at some point he must have changed

3 his hair style, right?

4 **A.** Apparently he has.

5 **Q.** When he changed his hair style, he then went to a

6 government agency to have his picture taken?

7 **A.** That's how it's done, yes.

8 **Q.** Is it fair to say Mr. Solondz wasn't trying to hide his

9 appearance from the government?

10 **A.** I don't know what Mr. Solondz intention was.

11 **Q.** But the point is, he went in and had his picture taken by

12 a government agency; is that correct?

13 **A.** That's correct.

14 **Q.** Now at some point on this drive down to Olympia is it's

15 correct that Ms. Kolar describes Lacey Philabaum as a younger

16 version of me?

17 **A.** That's correct.

18 **Q.** And that's in your notes?

19 **A.** Yes. I quote the "me" in my notes.

20 **Q.** She also described Briana Waters as outgoing?

21 **A.** That's correct.

22 **Q.** Plays music?

23 **A.** Yes.

24 **Q.** Clean cut?

25 **A.** That's correct.

1 Q. In fact you wrote in your notes Ms. Kolar said don't
2 remember Briana and Lacey together?

3 **A.** That's correct.

4 Q. Your Honor, I would move for admission of just one page,
5 the fourth page of Exhibit A-45?

6 MR. BARTLETT: No objection.

7 THE COURT: Admitted.

8 (Exhibit No. A-45 admitted.)

9 | BY MR. FOX:

10 Q. So what you have in your notes is "Don't remember Briana
11 and Lacey together."

12 A. That's correct.

13 Q. Now, after you went down Olympia with Ms. Kolar, you wrote
14 up a 302 report?

15 A. That's correct.

16 Q. And isn't it correct when you typed up that report you
17 wrote in there, Kolar did not recall Briana and Lacey being
18 close friends?

19 A. That's correct.

20 Q. So, when she actually said she didn't remember Briana and
21 Lacey together, you wrote that they weren't close friends?

22 A. I asked a series of questions that were concerning the
23 relationships of different people.

24 When I went and wrote the 302 and saw this notation,
25 "don't remember Briana and Lacey together," I associated that

1 answer with those questions regarding whether they were close
2 friends.

3 **Q.** What she really said is she didn't remember Briana and
4 Lacey being together?

5 **A.** I don't know what she really said. I understood it she
6 was talking in a social context.

7 **Q.** But in your notes, you put, it's very clear, "Don't
8 remember Briana and Lacey together," the notes you were taking
9 as you were driving down to Olympia?

10 **A.** Yes, and I don't know if that's a quote. There's no
11 quotations in my note but that's what my notation says.

12 **Q.** Ms. Kolar if in fact said she didn't remember Briana and
13 Lacey being together, that would have been important, right?

14 **A.** It may have been, I understood this to be in a social
15 context.

16 **Q.** In fact, if there's any confusion, the tape that Ms. Kolar
17 took of this meeting would be important, correct?

18 **A.** It could be.

19 **Q.** Because it may have the exact words on there?

20 **A.** It's possible, yes.

21 **Q.** If she didn't remember Briana and Lacey being together,
22 then they couldn't be at any planning meetings together,
23 right?

24 **A.** If Ms. Kolar's statement was saying she did not remember
25 either of them together at any point at any time, that might

1 be possi bl e.

2 **Q.** Sure, and they woul dn't have been together at the
3 Greenl ake Bar & Grill, if that's what she was sayi ng, ri ght?

4 **A.** Ms. Kolar never pl aces Lacey wi th the UW arson.

5 **Q.** And they coul dn't have been together i n the rental car?

6 **A.** Agai n, Ms. Kolar does not place Lacey at the UW arson or
7 i n the rental car.

8 **Q.** Sure. Now, yesterday when -- I am sorry, I last week you
9 were present i n court when I was asking Ms. Kolar about her
10 travels to New York Ci ty i n December of 2005, ri ght?

11 **A.** That's correct.

12 **Q.** And you recal l that I asked her some questi ons about some
13 phone calls she made on December 10, ri ght?

14 **A.** Not speci fi cal ly, but I was present.

15 **Q.** You recal l I asked her whether she had gone to Pl anet Hemp
16 after bei ng cal led by agent Qui mby ri ght?

17 **A.** I do recal l that.

18 **Q.** And I thi nk she said that well, she seems to recal l goi ng
19 shoe shoppi ng at some point, ri ght?

20 **A.** That's correct.

21 **Q.** But i t's correct that, is it not, that the phone number
22 that I read off to her, apparently i s not registered to Pl anet
23 Hemp?

24 **A.** I understand that mi ght be true.

25 **Q.** It's actuall y registered to an i nternati onal travel

1 agency, right?

2 **A.** I believe that might be true.

3 **Q.** A travel agency that specializes in travel to Japan
4 apparently.

5 **A.** I don't know.

6 MR. BARTLETT: Objection, Your Honor.

7 THE COURT: Is this leading to some particular --

8 MR. BARTLETT: I don't believe there's a good factual
9 basis for that last question.

10 MR. FOX: I will strike it.

11 THE COURT: All right. Stricken.

12 BY MR. FOX:

13 **Q.** In any case, Google has the phone number I mentioned
14 registered to Planet Hemp?

15 **A.** I have not looked to see what Google has for it.

16 **Q.** You understand that we and the government have reached a
17 stipulation to that, isn't that correct?

18 **A.** I actually don't understand that, but that may be true.

19 **Q.** Do you want to read the stipulation right now?

20 MR. FOX: Your Honor, may I read a stipulation to the
21 jury.

22 THE COURT: Go ahead.

23 MR. FOX: The United States of America, by and
24 through Jeffrey C. Sullivan, United States Attorney for the
25 Western District of Washington, and Mark Bartlett and Andrew

1 Friedman, Assistant United States Attorneys for said District,
2 and defendant Briana Waters, and her attorneys, Neil Fox and
3 Robert Bloom, agree and stipulate as follows:

4 Telephone number (212) 599-3405, which was called twice by
5 Jennifer Kolar at 4:19 p.m. and 4:20 p.m. on December 10,
6 2005, is the telephone number for HIS International Tours,
7 Inc., which is a travel agency. HIS International Tours,
8 Inc., has been the subscriber for that telephone number since
9 at least 1999.

10 The telephone number is incorrectly listed on Google as
11 being subscribed to by Planet Hemp. Based upon that listing,
12 defense counsel, Neil Fox, felt that he had a good-faith basis
13 to ask Jennifer Kolar whether she had telephoned Planet Hemp
14 on December 10, 2005.

15 The parties further agree that this stipulation may be
16 read to the jury.

17 And it's signed by the attorneys and Ms. Waters. There
18 are also the phone records and the Google listing.

19 BY MR. FOX:

20 Q. Now, you had other meetings in February of 2006 with other
21 people pertinent to this investigation, right?

22 A. That's correct. We interviewed Chelsea Gerlach and Susan
23 Savoie.

24 Q. But you also interviewed Lacey Philabaum, right?

25 A. That's correct.

1 **Q.** I think you said on direct that at some point you called
2 up her father; is that correct?

3 **A.** I did.

4 **Q.** You said that you wanted to talk to his daughter about an
5 arson investigation, or did you tell him what type of
6 investigation you wanted to talk about?

7 **A.** Yeah, I believe I told him that it was an arson
8 investigation. I distinctly remember him asking me if I was
9 calling regarding a civil or criminal matter. I told him it
10 was a criminal matter.

11 **Q.** At some point on February 21, you had a meeting with her,
12 with Ms. Philabaum?

13 **A.** That's correct.

14 **Q.** Now, Ms. Philabaum is Stan Meyerhoff's girl friend?

15 **A.** I believe that to be true.

16 **Q.** She had been on the FBI's radar screen for some time,
17 right?

18 **A.** I had been aware of her in this investigation, for a
19 little while.

20 **Q.** And you've heard testimony from Ms. Philabaum that her
21 boyfriend, Mr. Meyerhoff, had told her that he had turned
22 everyone in, including her, right?

23 **A.** I believe that to be true.

24 **Q.** Now, you only had contact with Ms. Philabaum in late
25 February, right?

1 **A.** That's correct.

2 **Q.** And you had no other contact with her or her lawyer before
3 then?

4 **A.** That is correct.

5 **Q.** Now, you reached out to her because you wanted her to
6 cooperate as soon as possible, right?

7 **A.** That's correct, we were looking to reach out to both
8 Briana Waters and Lacey Philabaum at the same time. It just
9 worked out that we contacted Lacey first.

10 **Q.** And I think your testimony was that you didn't provide
11 Ms. Philabaum any information?

12 **A.** That's correct.

13 **Q.** Now, there are cases, or there are instances in this
14 investigation, where you did meet with a suspect and his
15 lawyer, and told them information about your investigation;
16 isn't that right?

17 **A.** There's times when we met with individuals associated with
18 this investigation, where to show them that we were not
19 bluffing, law enforcement frequently, we bluff at times with
20 suspects, to try to gain some cooperation, get them to start
21 talking with us. In some cases, we wanted to make sure that
22 they knew that we had details that only the participants would
23 have known. We were very careful not to identify who was
24 involved or give them information that they wouldn't know if
25 they weren't involved, but that is true.

1 **Q.** In fact, I think on direct you testified how you met with
2 Mr. Di bee and his attorney Robert Goldsmith on December 9,
3 2005?

4 **A.** That's correct.

5 **Q.** Now, that's two days after there were a series of arrests
6 from the Oregon indictments, right?

7 **A.** That's correct.

8 **Q.** And there were already news reports about who had been
9 arrested?

10 **A.** That's correct.

11 **Q.** And I believe you testified that you met with Mr. Di bee
12 and his attorney at -- was it Mr. Friedman's offices?

13 **A.** In a conference room.

14 **Q.** At the U.S. Attorney's Office?

15 **A.** At the U.S. Attorney's Office.

16 **Q.** Mr. Friedman told Mr. Di bee that he was a suspect in at
17 least one arson, right?

18 **A.** Yes.

19 **Q.** The Cavel West case, correct?

20 **A.** That's correct.

21 **Q.** He said that time was short, right?

22 **A.** We were encouraging him to cooperate quickly.

23 **Q.** You basically told him you needed him to cooperate and
24 that very soon, any information he had would be of little
25 value since other people were already talking, right?

1 **A.** It may have been said, yes.

2 **Q.** And then you gave Mr. Di bee and his attorney, a detailed
3 presentation about Cavel West case, about the physical
4 evidence?

5 **A.** It was not about the Cavel West case or the physical
6 evidence. I gave the detailed account of what we believe he
7 did at that arson. I used phrases like mail 1, mail 2, mail
8 3, female 1, to account for who might have been standing next
9 to him when he did a particular thing.

10 The Cavel West communiqué is very detailed as far as
11 certain things that happened. And we had to express that we
12 knew things that were beyond that communiqué that only people
13 who were there would have known. We were very careful not to
14 reveal who any other of the individuals were that were there.

15 **Q.** Sure. But it's fair to say, that some of the people that
16 had been arrested already were in the news, right?

17 **A.** There was a lot of news about people arrested, yes.

18 **Q.** You showed Mr. Di bee pictures of the scene, right?

19 **A.** I believe we did show some, at least an aerial photo of
20 the scene.

21 **Q.** So you didn't question Mr. Di bee at that point, right?

22 **A.** No, we were trying to gain his cooperation.

23 **Q.** But this wasn't you interrogating him, this was you
24 explaining things to him, right?

25 **A.** We were showing we were not bluffing with the information

1 we had.

2 **Q.** Sure. Then after that meeting, that was -- I think you
3 said that was the last time you saw Mr. Di bee?

4 **A.** That's correct.

5 **Q.** He took off?

6 **A.** That's correct.

7 **Q.** Now on direct examination, you were shown what's been
8 admitted into evidence as Exhibit 531: This was the street
9 screen shot off Mr. Di bee's hard drive, his address book?

10 **A.** That's correct.

11 **Q.** I believe you testified that it shows an entry for Bri,
12 right?

13 **A.** That's correct.

14 **Q.** With an e-mail address at hotmail.com, right?

15 **A.** That's correct.

16 **Q.** Now, hotmail.com is a normal domain? It's something that
17 I think Microsoft runs, right?

18 **A.** That's true.

19 **Q.** And it's not a secret website or anything like that?

20 **A.** That's correct.

21 **Q.** And in fact on Mr. Di bee's computer, there were probably
22 hundreds of pages of entries in this address book, right?

23 **A.** There were a number of entries, I don't know how many
24 pages.

25 **Q.** This is just one of many entries?

1 **A.** That's correct.

2 **Q.** And there's nothing about this entry where it says Briana

3 Waters at ELF.com?

4 **A.** I don't believe there's an ELF.com.

5 **Q.** You don't know when this entry was put in the address

6 book?

7 **A.** We don't know.

8 **Q.** And you don't know why it was put in the address book?

9 **A.** I do not.

10 **Q.** It's just an entry in his address book?

11 **A.** I think it implies he had some reason to have her name in

12 his entry book.

13 **Q.** In any case, when Mr. Di bee took off, you weren't

14 following him at that point, were you?

15 **A.** No, I pursued Mr. Di bee for quite a while.

16 **Q.** But I guess what I am saying, you hadn't physically

17 tracked his movements after you were at the U.S. Attorney's

18 Office that day?

19 **A.** That's correct.

20 **Q.** And did you attempt to monitor his movements through his

21 cell phone at all after he left the U.S. Attorney's Office?

22 **A.** No, we did not.

23 **Q.** It's possible that the cell phone battery or the cell

24 phone can be used as a tracking device; isn't that right?

25 **A.** You can get information from a phone company, as far as if

1 calls are being made, what cell tower they might be being
2 bounced off of. That's possible.

3 Q. And you hadn't been doing that on an active basis with
4 Mr. DiBee when he left the U.S. Attorney's Office on December
5 9?

6 A. That's correct.

7 Q. Now, you also had not been following Lacey Philabaum for
8 the two months between her boyfriend's arrest and when she
9 came into the U.S. Attorney's Office, right?

10 A. We didn't have surveillance teams on her, if that's what
11 you are asking.

12 Q. You didn't?

13 A. We did not.

14 Q. So you really have no knowledge as to who she contacted in
15 those two months, right, between the time of Mr. Meyerhoff's
16 arrest and the time she appeared in the U.S. Attorney's
17 Office?

18 A. That's correct.

19 Q. You didn't listen in on her phone calls at all?

20 A. No, we did not.

21 Q. The FBI does have the power to get search warrants to
22 listen in on people's phone calls?

23 A. They are very difficult to get. In my eight years, I have
24 never got one.

25 Q. Is it not correct that in drug cases they are used a lot?

1 **A.** I would never claim they are used a lot. It has to be the
2 last means with which to gather certain types of evidence.

3 **Q.** Are you aware of any drug cases within the Western
4 District of Washington in the last few years that used wire
5 taps on phone call conversations as a major part of the case?

6 **A.** I am aware of it, yes.

7 **Q.** So you know people that, in law enforcement communities
8 have used that investigative tool?

9 **A.** That's true.

10 **Q.** In fact, I think there's some huge drug ring in Skagit
11 county that was broken with that type of investigative tool,
12 is that not correct?

13 **A.** I have no personal knowledge of that.

14 **Q.** Now, you also know that when people are prisoners in
15 correctional facilities in jails, and whatnot, their telephone
16 calls are monitored, are they not?

17 **A.** I understand that to be a common practice.

18 **Q.** You were aware that Stan Meyerhoff was in a jail for the
19 months of January and good part of December of 2005, 2006,
20 right?

21 **A.** That's correct.

22 **Q.** If you wanted, you could have gotten copies of the tapes
23 of their phone calls, of Stan Meyerhoff and Lacey Philabaum's
24 phone calls?

25 **A.** We could have requested that.

1 **Q.** Did you ever?

2 **A.** I have not, no.

3 **Q.** Are you aware of whether or not they actually did talk
4 over the phone? While he was in jail?

5 **A.** It's just general information. I believe they probably
6 did.

7 **Q.** So you have no idea what Stan Meyerhoff and Lacey
8 Philabaum talked about?

9 **A.** Personally I do not.

10 **Q.** When Stan Meyerhoff was arrested the FBI exercised a
11 search warrant and searched his house?

12 **A.** That's correct.

13 **Q.** They seized -- the FBI seized Mr. Meyerhoff's computer,
14 right?

15 **A.** I believe that to be true.

16 **Q.** During the course of this investigation, you asked
17 Jennifer Kolar to bring in her computer from 2001 for your
18 review, right?

19 **A.** I don't know that I asked specifically for her, she made
20 it aware to us through her attorney that she had found that
21 computer and that they would be turning it over to us, but I
22 did not independently request it.

23 **Q.** But you didn't ask Ms. Kolar to bring in any computers
24 that she currently was using for your review, did you?

25 **A.** No, we did not.

1 **Q.** You could have also executed a search warrant to search
2 Ms. Kolar's office, right, if you wanted to?

3 **A.** I don't know if we had probable cause for that or not.

4 **Q.** Well, at some point, I guess you said that you raided Joe
5 Di bee's office, right?

6 **A.** Yes, we were able to get a search warrant for that.

7 **Q.** And you seized his computers?

8 **A.** Yes, we did.

9 **Q.** You never asked Ms. Kolar to bring in her contemporaneous
10 computers, the computers she was using in December 2005?

11 **A.** That's correct, we had no evidence -- we had no reason to
12 believe there was evidence of a crime on there.

13 **Q.** You didn't ask her to review it, did you? What you
14 believed or not, you didn't ask her, can I take a look at your
15 computer to see who you have been E mailing the last few
16 weeks.

17 **A.** No, we did not.

18 **Q.** Similarly, with Lacey Philabaum you never asked her to
19 produce her computer if she had one from 2005, 2006, so that
20 you could review who she had been communicating with via her
21 computer?

22 **A.** That's correct.

23 **Q.** Now, you weren't following -- the FBI wasn't following
24 Ms. Kolar either in December 2005 or January 2006?

25 **A.** That's correct.

1 **Q.** And you knew that both Ms. Kolar and Ms. Philabaum had
2 ties to Spokane, right?

3 **A.** I don't know that I knew that Ms. Philabaum was
4 associated with Spokane until the time she came in or at least
5 until the time I tried to reach out to her.

6 **Q.** It turns out she has ties to Spokane?

7 **A.** Yes, we eventually learned that.

8 **Q.** You knew that both Ms. Philabaum and Ms. Kolar had ties
9 to Eugene, Oregon?

10 **A.** As did most of the defendants.

11 **Q.** You knew that they both had ties to Seattle somehow?

12 **A.** I don't know what ties Ms. Philabaum had to Seattle --

13 **Q.** Well, Ms. Kolar lived in Seattle, right?

14 **A.** Could you ask the question again?

15 **Q.** Did Ms. Kolar live -- or lived in Seattle?

16 **A.** That's correct.

17 **Q.** And Ms. Philabaum, while she was residing in Spokane, her
18 lawyer was in Seattle, right?

19 **A.** That's correct.

20 **Q.** You also knew by February 21, did you not, that Ms. Kolar
21 had used Kenny Clark as kind of a secret messenger for her at
22 various points in her life?

23 **A.** I don't know I would characterize it as a secret
24 messenger. I knew that was a friend of hers.

25 **Q.** You knew that by February 21, Ms. Kolar had some

1 communications with Mr. Di bee through a third person, right?

2 Through Mr. Clark?

3 **A.** I believe Mr. Di bee reached out to Ms. Kolar through
4 Mr. Clark.

5 **Q.** And two years earlier, or a year and a half earlier
6 Ms. Kolar communicated with Mr. Di bee through Mr. Clark?

7 **A.** That's correct.

8 **Q.** Ms. Philabaum -- you knew both her parents were
9 attorneys?

10 **A.** I knew her father was an attorney, I did not know her
11 mother was an attorney.

12 **Q.** Now, when Ms. Philabaum came in to talk to you on
13 February 21, she was facing a lot of time in prison as you
14 understood it?

15 **A.** Possibly.

16 **Q.** When she mentioned Briana Waters' name, she called her,
17 referred to her as Briana, right?

18 **A.** I believe that's true.

19 **Q.** She didn't give you a physical description of Briana
20 Waters without a name, she just mentioned the name, right?

21 **A.** I'd have to refer back to my notes or report for that.

22 **Q.** She referred to Ms. Waters' boyfriend as Connor?

23 **A.** That's correct.

24 **Q.** She told you that he and Briana had just broken up in May
25 of 2001?

1 **A.** That's the way I understood it.

2 **Q.** And the week before the University of Washington action,
3 she said that she met Briana at the Denny's or Perkins; is
4 that correct; is that right?

5 **A.** I believe that's accurate.

6 **Q.** And she said that Diver wasn't there, right?

7 **A.** I'd have to refer back to my notes.

8 **Q.** Sure, why don't you take a look. A-115? It's marked
9 14092.

10 **A.** What page.

11 **Q.** Why don't you identify what's been marked for
12 identification as A-115, so the record is clear.

13 **A.** A-115 is a copy of my notes from February 21 interview of
14 Lacey Philabaum.

15 **Q.** 2006?

16 **A.** 2006.

17 **Q.** Why don't you take a look at 14092?

18 **A.** I see it.

19 **Q.** Does that refresh your recollection as to whether she told
20 you that Diver was at Denny's or Perkins?

21 **A.** I have Diver not there. I can't conclusively link that
22 that's to the Denny's or Perkins, I would have to refer back
23 to my 302.

24 **Q.** The Denny's or Perkins was immediately above Diver not
25 there?

1 **A.** That's how it's ordered on the notes.

2 **Q.** Just to tie up what we are talking about when she mentions

3 Briana's name, it's Briana, right?

4 **A.** That's what I wrote.

5 **Q.** Underneath that, you have an entry, do you not, that says

6 slept in bus that night, Saturday?

7 **A.** I do.

8 **Q.** So, is it your memory that Ms. Philabaum, first time she

9 talked to you said she slept in a bus on Saturday night?

10 **A.** I have to refer to my 302.

11 **Q.** Okay. That should be in front of you, as well as 114.

12 **A.** 114?

13 **Q.** I believe so.

14 I'm sorry, 113.

15 **A.** I do not appear to have a 113 up here.

16 THE CLERK: Is it A-113?

17 MR. FOX: Yes, I am sorry.

18 BY MR. FOX:

19 **Q.** Why don't you identify for the record A-113?

20 **A.** A-113 is myself and Agent Torres' 302 concerning the

21 interview of Lacey Philabaum, February 21, 2006.

22 **Q.** Why don't you refer to page 6 of that document and see if

23 that refreshes your recollection?

24 **A.** Yes, the second paragraph states Briana and Connor had

25 recently broke up.

1 **Q.** In terms of whether the person known as Diver was at the
2 meeting at Denny's or Perkins, you don't have to read your
3 report into evidence, but does that refresh your recollection?

4 **A.** The report does not mention whether Diver was there.

5 **Q.** I think a later point in your report you indicate that
6 Philabaum said Diver was at one of the meetings but doesn't
7 recall which one, right, fourth paragraph down?

8 **A.** That's correct.

9 **Q.** And then in your 302, is there any mention of the thing
10 about sleeping in a bus that night?

11 **A.** No, there isn't.

12 **Q.** So do you now, as you sit here -- do you have a memory as
13 to what Ms. Philabaum -- the context in which she mentions
14 sleeping in a bus?

15 **A.** I do not.

16 **Q.** Again, you talked to Ms. Philabaum a couple times, right,
17 over the next couple months?

18 **A.** That's correct.

19 **Q.** On March 7, you spoke to her again?

20 **A.** That's correct.

21 **Q.** I believe at that time you talked to her about Ms. Waters,
22 right?

23 **A.** That's correct.

24 **Q.** And the fact that Ms. Waters played a violin?

25 **A.** Sounds accurate.

1 **Q.** Ms. Philabaum told you -- talked to you about running at
2 a track by the house that Ms. Waters resided at, right?

3 **A.** Yes, she was associating that with the house where Briana
4 Waters was living.

5 **Q.** It's correct that at the time that she talked about
6 Ms. Waters playing the violin and running at the track by
7 Ms. Waters' house, Lacey Philabaum never said anything about
8 Briana being in the kitchen playing her violin upon her return
9 from running on the track?

10 **A.** I do not recall that --

11 **Q.** Okay.

12 **A.** -- being said.

13 **Q.** Now, on direct you were asked about a sketch that Lacey
14 Philabaum made of this house on Conger, right? Or the house
15 that you came to believe was the house at Conger, right?

16 **A.** That's correct.

17 **Q.** Now, if in fact that sketch was of the house on Conger,
18 there's nothing about that sketch that shows that Lacey
19 Philabaum was at that house in May of 2001, right?

20 **A.** The sketch in and of itself does not place her any
21 particular time at that house. It's her account of how she
22 knows that home --

23 **Q.** Sure.

24 **A.** -- or that house that is significant.

25 **Q.** She could have been at that house in July of 2001, right,

1 and still made the same sketch?

2 **A.** It's possible.

3 **Q.** In fact, the sketch isn't very detailed in terms of what
4 the interior of the house looks like?

5 **A.** Yes, she did not try to draw the interior of the house.

6 **Q.** It's just kind of a house and a driveway and an
7 outbuilding?

8 **A.** That, and she showed on her sketch how she would access
9 the backyard from the side, indicating there was a fence
10 there, indicating there was a school off to the side.

11 **Q.** But the school would have been there in July of 2001?

12 **A.** Yes, it would.

13 **Q.** And the driveway would have been there in July 2001?

14 **A.** I would expect so.

15 **Q.** It's only after you met with Lacey Philabaum on February
16 21, 2006, that you decided to question Jennifer Kolar about
17 Ms. Waters, right, to question her more about the University
18 of Washington case.

19 **A.** It was after Lacey Philabaum, that we did have the full
20 debrief of the UW arson.

21 **Q.** So what you call the full debrief of the UW arson took
22 place on March 6, 2006?

23 **A.** That's correct.

24 **Q.** About two weeks after you met with Ms. Philabaum?

25 **A.** That's correct.

1 **Q.** So this was really the first time since December 16 that
2 you sat down with Ms. Kolar to talk to her about the
3 University of Washington, right?

4 **A.** Specifically, yes.

5 **Q.** During this interview on March 6, 2006, there's no
6 indication that you questioned Ms. Kolar about Capitol Hill
7 Girl; is that correct?

8 **A.** That's correct.

9 **Q.** You didn't ask her about Crazy Dan at this interview on
10 March 6, right?

11 **A.** We had done other investigations regarding those people --
12 MR. BARTLETT: Objection, Your Honor let the witness
13 answer the question.

14 THE COURT: Just a minute. When you ask a question,
15 let him answer.

16 **Q.** The question is, did you -- you didn't question Ms. Kolar
17 about Crazy Dan on March 6, right?

18 **A.** We did not.

19 **Q.** And you didn't question Ms. Kolar on March 6, 2006, about
20 the Punk Boyfriend of Capitol Hill Girl, right?

21 **A.** We did not.

22 **Q.** And actually, you didn't ask her at all, at that
23 interview, whether she had made any mistakes in her memories
24 or speculation or whatever, back in December, right?

25 **A.** Understood her to be speculating back to December 16 and I

1 did not feel the need to clarify that.

2 **Q.** So you never asked her to clarify whether she had made any
3 mistakes earlier, right?

4 **A.** It was clear to myself that Ms. Kolar was confused when
5 she mentioned those names. That was consistent when she
6 talked about the detail of the arson on March 6.

7 **Q.** Sure. But basically, after March 6, 2006, Crazy Dan, Punk
8 Boyfriend, and Capitol Hill Girl really go off into oblivion,
9 right? There's no more questioning about those people.

10 **A.** They did not go off into oblivion. We investigated every
11 name that we were given, no matter what the context or what
12 our understanding was during that December 16th interview. We
13 did not ask Ms. Kolar specifically, but we knew who those
14 people likely were based on other investigations.

15 **Q.** Sure, I understood that, but in terms of your questioning
16 of Ms. Kolar, you never again raised those names with her;
17 isn't that true?

18 **A.** That's correct.

19 **Q.** You went to the Grand Jury on March 15, 2006, right?

20 **A.** That sounds correct.

21 **Q.** To seek an indictment against Ms. Waters?

22 **A.** That's correct.

23 **Q.** And you testified under oath at that hearing?

24 **A.** I did.

25 **Q.** And you referred to Ms. Kolar as CW 3, right?

1 **A.** That's correct, we were trying to hide the identities of
2 these people.

3 **Q.** But CW 3 is cooperating witness?

4 **A.** That's correct.

5 **Q.** And that's how you refer to her in the course of your
6 testimony before the Grand Jury?

7 **A.** I did.

8 **Q.** Now, Ms. Kolar didn't testify in front of the Grand Jury,
9 right?

10 **A.** No, she did not.

11 **Q.** You related to the Grand Jury what Ms. Kolar had said to
12 you?

13 **A.** We provide a summary of what we were told by Ms. Kolar,
14 yes.

15 **Q.** And is it not correct that in your testimony to the Grand
16 Jury, you never once mentioned anything about Capitol Hill
17 Girl?

18 **A.** That is correct.

19 **Q.** And you never once mentioned how Ms. Kolar had "remembered
20 Briana Waters' name, right?

21 **A.** My testimony before the Grand Jury is a summary of the
22 information from years of investigation.

23 **Q.** Sure.

24 **A.** We did not break down specific interviews. There are
25 general statements of what these cooperating witnesses had

1 told us.

2 Q. And then my question to you is you didn't tell them about
3 Capitol Hill Girl, right?

4 A. I did not.

5 Q. You did not tell the Grand Jury about Crazy Dan, right?

6 A. I did not.

7 Q. You did not tell them about Capitol Hill Girl's Punk
8 Boyfriend?

9 A. That's correct.

10 Q. And in fact, you testified to the Grand Jury, that CW 3
11 and CWA, CWA was Lacey Philabaum, right?

12 A. That may be true.

13 Q. That they were both consistent that Briana was the
14 lookout, isn't that what you told the Grand Jury?

15 A. Yes, and that is true.

16 Q. When you say consistent, you didn't tell the Grand Jury
17 that Jennifer Kolar had changed the names of the people that
18 she associated with the University of Washington fire, right?

19 A. I don't believe she was associating those other people as
20 being there that night during that arson.

21 Q. Well, did Agent Torres list in his note "at arson with
22 those five people"?

23 A. You need to ask Agent Torres what his understanding of
24 those notes mean.

25 Q. Did you not testify on direct that Ms. Kolar had told you

1 he'd given five names connected to her discussion of the
2 University of Washington arson?

3 **A.** I believe I testified that those names were given in the
4 context of the arson.

5 **Q.** Okay. And my point is, that you didn't tell the Grand
6 Jury about three of those names, is that not correct?

7 **A.** That's correct. We did not see that was important.

8 **Q.** You did not see it as important, but you didn't tell the
9 Grand Jury what had transpired in December 2005, is that not
10 correct?

11 **A.** My Grand Jury testimony was a summary of what we had been
12 told by Ms. Philabaum and Ms. Kolar.

13 **Q.** Now, it's correct in the Grand Jury, the defense isn't
14 present, right?

15 **A.** That's correct.

16 **Q.** So, there's no cross-examination; is that right?

17 **A.** That's correct.

18 **Q.** It's just the prosecutor asking you questions, right?

19 **A.** That's correct.

20 **Q.** Now, before you had testified -- let's just move on a bit
21 about wire taps and things like that, right?

22 **A.** Yes, you asked me some questions about that.

23 **Q.** In the course of your -- the FBI's investigation in any of
24 these cases, any of the fires that we heard testimony about in
25 the last two weeks, did the FBI ever use wire taps?

1 **A.** I am not aware of any wire taps in this investigation at
2 all.

3 **Q.** Even -- and listening devices in people's apartments and
4 things like that, did you ever use any of those?

5 **A.** No, I consider that a wiretap.

6 **Q.** A wiretap would be on a phone, I guess. Now, the FBI does
7 have forensic laboratories; is that right?

8 **A.** Yes, we do.

9 **Q.** And there's all sorts of scientific testing that can go on
10 in those laboratories, right?

11 **A.** I would assume.

12 **Q.** And we heard from Ms. Betty about the fingerprint testing?

13 **A.** That's correct.

14 **Q.** And there's trace evidence that can be tested, right?

15 **A.** Yes.

16 **Q.** Is it not correct that the FBI labs also have the ability
17 to do metallurgical testing on cars and paint?

18 **A.** I don't understand them to have a forensic body shop if
19 that's what you are asking, but we could give them a paint
20 sample and ask them to tell us something about it.

21 **Q.** Sure. And the FBI lab could also send scientists out to a
22 car, for instance, and do testing to see whether there's been
23 damage to that car, is that not correct?

24 **A.** No, my interaction with the laboratory, I understood that
25 we would have to talk to other law enforcement agencies that

1 would specialize in something like that.

2 **Q.** Which other law enforcement agencies specialize in that?

3 **A.** I believe some of the State Patrols may have forensic body
4 mechanics, if you will.

5 **Q.** So it was something, though, that is within the FBI's
6 ability to ask another law enforcement agency to do that type
7 of testing, right?

8 **A.** Yes, we could have.

9 **Q.** Some of that testing could also look at paint to see
10 whether there's been retouching on the characters right?

11 **A.** That could be.

12 **Q.** Did the FBI bring Judy Barry's car, the environmental
13 activist who was a victim of a car bombing, back to
14 Washington, D.C., for testing?

15 **A.** I have no knowledge of that investigation at all.

16 **Q.** Now, if the car you wanted to test was owned by a private
17 party, you would have to get a court order to test it, right?

18 **A.** We would have to have permission of the owner or search
19 warrant.

20 **Q.** I guess the point is, if you wanted to do the testing,
21 there are ways that you could have done it, right? I am
22 referring to the car on 775, the vehicle that was rented by
23 Mr. Corrina and his wife?

24 **A.** I spent a considerable amount of time considering whether
25 testing of that vehicle for any damage would have been

1 beneficial to the investigation. Considering it had been
2 rented approximately 30 times after Mr. Corrino had rented it,
3 and it had transferred hands a number of times to dealerships
4 and five years had passed, any evidence of damage could have
5 in no way have been linked to a particular moment in time five
6 years earlier.

7 **Q.** Okay.

8 **A.** So we did not have it tested because it would not have
9 told us anything.

10 **Q.** Now, the FBI also -- I think you were able to get
11 different phone records, right?

12 **A.** Yes, we can get phone records.

13 **Q.** You can even get warrants to look at people's mail, right?

14 **A.** That would be a warrant issued, at least a court order or
15 warrant.

16 **Q.** You could review people's e-mails, right?

17 **A.** I believe that's considered the same as a wiretap.

18 **Q.** Sure, but there's the ability to be able to track all of
19 that, right?

20 **A.** If there's probable cause to get those types of orders or
21 warrants.

22 **Q.** In fact, I think there's some references in the media to
23 national security council tracking people's e-mails even
24 without warrants, right?

25 **A.** That's true in the media.

1 Q. Now, let's move on a little bit about, I think on direct,
2 after we talked about Lacey Philabaum's sketching Conger
3 Street or Avenue, you then moved on to discussing the raid of
4 Justin Solondz' cabin in Brinnon, Washington; is that correct?

5 A. That's correct.

6 Q. Now, you raided his cabin -- you searched his cabin in
7 January of 2007, right?

8 A. That's correct.

9 Q. So that is almost six years after the University of
10 Washington fire, right?

11 A. That's correct.

12 Q. And when you went to the cabin, it was uninhabited, right?

13 A. Correct, there was no one there when we arrived on scene.

14 Q. I think you testified about what's been admitted into
15 evidence as Exhibit 543.

16 This is the note, "Hey Toni e, Welcome home!"

17 MR. FOX: I believe this has been admitted, right?

18 THE CLERK: Yes, it has.

19 BY MR. FOX:

20 Q. This is the note you found in the cabin?

21 A. That's correct.

22 Q. When you read through this note, it sounds like he's
23 moving out, right; is that correct?

24 A. Let me read the note in detail.

25 Q. Sure. Do you want to just read the note out loud, I can't

1 recall if you did that yesterday?

2 **A.** I did not read it out loud.

3 **Q.** Read it out loud?

4 **A.** "Hey Toni e, Wel come home! It's surely not the feeling of
5 how you left it, but as I'm sure you will, make it feel
6 comfortable, especially with the inside. I am rushing around
7 trying to get everything wrapped up before I go, and I noticed
8 the sink on the cold water side started leaking. The nut
9 needs to be tightened, but the wrench I need is already moved
10 to Olympia, but I may have time to return before I depart for
11 good. A few other things: There are garbage bags of your
12 clothes in the attic space above the living room, which is
13 accessed by way of the sleeping loft (behind black fabric).
14 The front (driver's side) tire has a slow leak which by the
15 time you get here will probably be flat. There's a 12 volt
16 air compressor that runs off the car battery or off the 12
17 volt charger, both of which I am leaving in the passenger
18 seat."

19 **Q.** And then it say says, "Take care, Justin"?

20 **A.** I can't read that on the screen.

21 **Q.** I am sorry?

22 **A.** "Take care, Justin."

23 **Q.** It sounds like he's moving to Olympia?

24 **A.** I don't know that I understood he was moving to Olympia,
25 but he was moving out of the cabin.

1 **Q.** Then there was garbage bags full of Toni e's clothes
2 apparently that were being left in the attic?

3 **A.** That's apparently how it reads, yes.

4 **Q.** Now, you also testified about Exhibit 544; right?

5 **A.** Yes.

6 **Q.** These were various publications about anarchy that you
7 found in the cabin?

8 **A.** That's correct.

9 **Q.** I take it when you searched the cabin these weren't spread
10 out in quite this manner?

11 **A.** No, we displayed them to show what type of documents were
12 coming out of that box.

13 **Q.** So this display is your display?

14 **A.** It's our display, yes.

15 **Q.** It's true is it not, that there were a lot of other things
16 in that cabin besides periodicals about anarchism?

17 **A.** There were other documents and books.

18 **Q.** There were pictures?

19 **A.** That's correct.

20 **Q.** There were -- I think you talked about some of those
21 pictures yesterday, right?

22 **A.** Yes, we did.

23 **Q.** There were a lot of handwritten notes, right?

24 **A.** Yeah. There was some notebooks and stuff that looked like
25 it had come from school.

1 Q. I will refer you to what's been marked for identification
2 as A-211.

3 | Hopefully you now have Exhibit A-211 in front of you?

4 | A. Yes, A-211 is a copy of The Iliad.

5 Q. There's some other articles in there as well?

6 A. Yes, looks like copies of some other literature.

7 MR. FOX: I would offer what's been marked for
8 identification as A-211?

9 MR. BARTLETT: No objection.

10 THE COURT: Admitted.

11 (Exhibit No. A-211 admitted.)

12 | BY MR. FOX:

13 Q. You actually retrieved these with me this morning from the
14 box of documents in Justin's cabin?

15 A. That's correct.

16 Q. There are a lot of other materials we haven't put into
17 evidence?

18 A. That's correct.

19 Q. Is it fair to say this is other materials -- a selection
20 of other materials you found at Justin's cabin?

21 A. That's correct.

22 | 9. I think there's the Iliad by Homer?

23 A. That's correct.

24 Q. And there's another article down the road, called "The
25 Fate of the Earth": is that not correct?

1 **A.** That's correct.

2 **Q.** That's written by a nun from Caldwell, New Jersey; is that

3 right?

4 **A.** That appears to be correct.

5 **Q.** Sister Miriam MacGillis, a Dominican sister from Caldwell,

6 New Jersey, nun, spoke to an audience in Santa Rosa,

7 California, is that right?

8 **A.** That's correct.

9 **Q.** That's kind of a religious analysis of environmentalism?

10 **A.** I am not familiar with the material.

11 **Q.** You didn't read this particular article?

12 **A.** Not in detail.

13 **Q.** So you just took out the materials on anarchism and

14 displayed them to the jury, right?

15 **A.** We entered the items we felt relevant to the jury, yes.

16 **Q.** So you didn't think it was relevant that there were

17 nonanarchist writings, writings by nuns, in Justin's

18 belongings, did you?

19 **A.** No, I did not.

20 **Q.** You also talk about these maps that were found and I think

21 the exhibit was 551; is that correct?

22 **A.** That's correct.

23 **Q.** Again this is a box of maps you found in Justin Solondz's

24 cabin, right.

25 **A.** That's correct.

1 Q. There are, is it not correct -- there are a number of maps
2 there, right?

3 A. There were.

4 Q. One for Centralia and Chehalis in Lewis County?

5 A. That's correct.

6 Q. One for Santa Cruz, right?

7 A. That's correct.

8 Q. One for Phoenix, Arizona? Right?

9 A. That's correct.

10 Q. One for Los Angeles? Right?

11 A. That's correct.

12 Q. Then one map you pulled out was identified in 552, I think
13 you -- we have the actual map in evidence as 553?

14 A. That's correct.

15 Q. There's a map of Portland and it's folded to a particular
16 page, right?

17 A. I believe so, I can't read it on the screen here.

18 Q. This is Portland, right?

19 A. That's correct.

20 Q. There's another map in 553, that was folded in a
21 particular way, right?

22 A. That's correct.

23 Q. And the folding shows a good part of Seattle, south of the
24 ship canal right?

25 A. That's correct.

1 Q. And it also shows the University of Washington in the
2 upper part of the section, right?

3 A. That is correct.

4 Q. Now, there's nothing on this map that has the University
5 of Washington circled, right?

6 A. That is correct.

7 Q. No arrow saying this is the place, right?

8 A. That is correct.

9 Q. No marking saying Center for Urban Horticulture May 20,
10 2001, right?

11 A. That is correct.

12 Q. Now, you also testified about Exhibit 549, which was the
13 clothing that you found in those bags, right?

14 A. That's correct.

15 Q. And you talked about black knit hats and things like that?

16 A. That's correct.

17 Q. Now, it's true is it not that you also found pictures in
18 Mr. Solondz's cabin of people in costumes at various times?

19 A. There were pictures of people apparently at a party.

20 Q. And they were goofing around, right? And it looked like
21 they were goofing around?

22 A. That's what it looked like, yes.

23 Q. Someone had something over their -- like a mask over their
24 face, right?

25 A. That's correct.

1 Q. And kind of, I don't know, like they were wearing their
2 underwear or something and were acting really goofy?

3 A. That's correct.

4 Q. They weren't pictures of people going out on any type of
5 arson actions, right?

6 A. No, but the significance of those clothing items we found
7 was that they were found in context with those shower caps,
8 that is what, to me, was very significant and why we grabbed
9 that evidence.

10 Q. Sure, but my question though, there were pictures of
11 people dressed up in costume at various times?

12 A. Yes.

13 Q. Looking like they were having some silly college party?

14 A. That's correct.

15 Q. Now, Mr. Block's notebook, I believe that has been
16 admitted as 563.

17 MR. BARTLETT: I believe only one page of that was
18 admitted.

19 Q. Right, and I am putting up the page -- this is the page,
20 right?

21 A. Yes.

22 Q. There's an address 2613 Conger?

23 A. Yes.

24 Q. And there's the name Joshua over that address?

25 A. That's correct.

1 **Q.** So it's apparent, is it not, that someone besides Ocean
2 and Briana Waters at some point lived on Conger Avenue in that
3 house?

4 **A.** That's true.

5 **Q.** In fact a number of the houses you have spoken about
6 during the course of your investigation, there are a lot of
7 people that lived at those places, right? Some of those were
8 like student rooming houses?

9 **A.** I believe that's correct.

10 **Q.** I believe there was testimony about Justin Solondz cabin
11 on Bill Wake's land with having eight separate residences for
12 one phone?

13 **A.** That's correct.

14 **Q.** And the address 135 Percival Street, you investigated that
15 one as well?

16 **A.** We did look at that one.

17 **Q.** I think at some point you said there were calls from
18 Marilyn Waters phone to the phone at that address?

19 **A.** That's correct.

20 **Q.** And then I believe you linked that address to Teresa
21 Howell at some point?

22 **A.** The phone number is subscribed in the name of Teresa
23 Howell during that time period.

24 **Q.** And there were calls from this 280 phone number that you
25 believe was associated with Mr. Rodgers, to Teresa Howell's

1 phone; is that correct?

2 **A.** That's correct.

3 **Q.** But it's true that there were at least eight or nine other
4 people that were staying at that 135 Percival Street address
5 in the spring of 2001?

6 **A.** My understanding from talking to the landlord, was that
7 there were four to six people there at that time period.

8 **Q.** Four to six people registered to stay there, right?

9 **A.** That she believed were occupying the space.

10 **Q.** Now, you also, on direct, you talked about Exhibit 402,
11 and that was the materials taken off the ELF website?

12 **A.** That's correct.

13 **Q.** Now, this is not something that you found in the computer
14 associated with Briana Waters, right?

15 **A.** That's correct, that was taken off the Internet.

16 **Q.** This is something off in cyber space?

17 **A.** That's correct. It was posted shortly after the UW arson.

18 **Q.** But this is not something you found at Briana Waters'
19 house right?

20 **A.** We did not do a search of Briana Waters' house.

21 **Q.** So you didn't find it at her house?

22 **A.** That's correct.

23 **Q.** Now, you did, before you went down to talk to Ms. Waters,
24 you did -- the FBI did do some surveillance on her, right?

25 **A.** Yes, the agents from our Oakland office were trying to

1 locate where Ms. Waters was living.

2 **Q.** You did some background information on Ms. Waters?

3 **A.** Yes, we did.

4 **Q.** You got her driver's license picture?

5 **A.** That's right.

6 **Q.** You got her transcripts at some point, it may have been a

7 little later but at some point you got her academic

8 transcripts from the Evergreen State College?

9 **A.** We got hers and Justin Solondz and their photos.

10 **Q.** You knew at some point Ms. Waters had made a film about

11 Watch Mountain?

12 **A.** Yes, I learned that.

13 **Q.** And this is -- have you seen the film?

14 **A.** I have.

15 **Q.** It's a film about how nonviolent protests stopped

16 clear-cutting at a town called Randle; is that right?

17 **A.** That's correct.

18 **Q.** And you are aware that this film was shown back in 2001,

19 right?

20 **A.** I understood it was shown somewhere up in the Seattle

21 area, in 2001.

22 **Q.** Also shown in Olympia?

23 **A.** That's very likely.

24 **Q.** This film ultimately documents a successful nonviolent

25 campaign?

1 **A.** That's correct.

2 **Q.** The film ends on happy notes?

3 **A.** I don't recall the details of the end.

4 **Q.** Okay. But the land swap that the residents of Randl e were

5 actually trying to stop was actually cancel ed?

6 **A.** I believe that's true.

7 **Q.** The film ends with a bunch of people singing and having a

8 fun time, kind of like at a party?

9 **A.** I don't remember those specific details.

10 **Q.** When you were trying to locate Ms. Waters, you di dn't have

11 any di ffi culties locating her, di d you?

12 **A.** Actually, we di d.

13 **Q.** You were able to get her Department of Li censi ng

14 information from Cal i fornia, ri ght?

15 **A.** We were, but I di d not believe the address associated wi th

16 the dri ver's license was the address that she was Li ving at

17 when we contacted her.

18 **Q.** When you contacted her, she was Li ving under her own name?

19 **A.** Yes.

20 **Q.** There were survei llance of her going in and out of her

21 house, ri ght, with a baby, I thi nk?

22 **A.** I believe that's true.

23 **Q.** You had a lot more di ffi culty locating Mr. Rodgers, ri ght?

24 **A.** Yes, Mr. Rodgers was very di ffi cult to locate.

25 **Q.** In fact, I thi nk you testifi ed that he had a Post Offi ce

1 Box in Seattle, in the Seattle area, right?

2 **A.** Near the Sea-Tac Airport.

3 **Q.** But it turned out he was residing in Arizona, right?

4 **A.** At the time we made the arrest, yes.

5 **Q.** In December of 2005, right?

6 **A.** That's correct.

7 **Q.** And he actually had a car that was registered in Idaho;
8 isn't that right?

9 **A.** That is true.

10 **Q.** And the car was purchased in South Dakota, correct?

11 **A.** That's correct.

12 **Q.** So he had addresses, addresses all over the place, right,
13 or ties to lots of possible different locations; right?

14 **A.** That's correct.

15 **Q.** And then he had a bank account even in another state,
16 right?

17 **A.** I don't remember what state the bank account is associated
18 with.

19 **Q.** Okay. So how long did it take the FBI to locate
20 Mr. Rodgers?

21 **A.** We actively began looking for him during the fall of 2004
22 and found him early, I believe, mid November 2005.

23 **Q.** So, a little over a year?

24 **A.** That's correct.

25 **Q.** How long did it take you to find where Ms. Waters was

1 residing in the bay area?

2 **A.** I'd say approximately a month and a half, a month.

3 **Q.** Okay. A month, from January until February?

4 **A.** That sounds correct.

5 **Q.** You did credit checks on Ms. Waters; is that correct?

6 **A.** That's correct.

7 **Q.** You found she had different credit cards in her own name?

8 **A.** That's correct.

9 **Q.** Now, with regards to where Ms. Waters was living in 2001,
10 you had some difficulties pinning that down, right?

11 **A.** Yes, that was harder since we were going back in time
12 quite a bit more.

13 **Q.** It was probably harder when you met with Mr. Robert
14 Corrino. He lied to you and said he didn't know Briana
15 Waters, right?

16 **A.** That's correct. He told us he did not know her that first
17 time I met with Mr. Corrino.

18 **Q.** Sure, that was back in what, May of 2006?

19 **A.** Yes.

20 **Q.** He also, did he not, tell you that they had a variety of
21 people stay with them over the years, is that not correct?

22 **A.** I believe he did say that. It was not clear to myself
23 when I was talking to him whether he was talking about the
24 whole building. He didn't mention the tenants next door.

25 **Q.** Sure. Why don't we take a look at what's been marked

1 for identification as A-2?

2 **A.** This is my 302 report of my first interview with Robert
3 Corrina.

4 **Q.** This was based upon an investigation on May 16, 2006?

5 **A.** That's correct.

6 **Q.** Referring your attention to the third paragraph?

7 **A.** I see it.

8 **Q.** Is it not correct that Corrina said he did not recognize
9 Waters, right?

10 **A.** That's correct.

11 **Q.** And indicated that they have had a variety of people stay
12 with them over the years, right?

13 **A.** That's correct.

14 **Q.** And then only then does -- you have Corrina indicated that
15 the duplex next door had a lot of college students living
16 there over the years?

17 **A.** That's correct.

18 **Q.** So where he talks about a variety of people staying with
19 them over the years, that's in a separate sentence than his
20 reference to the duplex next door?

21 **A.** You are correct.

22 **Q.** Now, at some point after Mr. Corrina said that he didn't
23 know Briana Waters, you found out that his wife actually had
24 rented this car?

25 **A.** Yes, sometime later we found the rental records regarding

1 the car.

2 Q. And you visited his wife, Kara Larson, is that her name?

3 A. Yes.

4 Q. You visited her at her place of employment?

5 A. That's correct.

6 Q. Would it be fair to say, that was on January 19, 2007?

7 A. That sounds correct.

8 Q. Would it be fair to say that you were upset with her?

9 A. I would say it's accurate that there was some frustration
10 on our part. I do want to clear that in earlier testimony,
11 Mr. Corrina said that his impression from his wife was that
12 Mr. Friedman had yelled at Ms. Larson, and I know that not to
13 be the case. We had our meeting with Ms. Larson out in the
14 lobby area of where she worked and she asked that we whisper.
15 And while we were having our discussion with her, at times our
16 voices got above a whisper and she'd ask us to keep our voices
17 down. I can see where it may be perceived that we were
18 yelling, but I have never seen Mr. Friedman yell at anyone.

19 Q. Sure. But her perception might be accurate that your
20 voices were raised a little bit?

21 A. Yes, that's probably accurate.

22 Q. And you probably weren't too pleased with the fact that
23 she had testified in front of the Grand Jury that she had not
24 rented a car?

25 A. I don't know that that had anything -- what we were

1 frustrated with was after showing her the records of the
2 rental car she still had no memory of the rental car while we
3 were sitting with her.

4 **Q.** You actually told her, did you not, that you believe that
5 this particular vehicle was the rental vehicle used by the
6 subjects at the University of Washington arson?

7 **A.** I did believe that.

8 **Q.** But you told her that?

9 **A.** I did say that.

10 **Q.** Isn't it correct that Mr. Friedman here told Ms. Larson
11 that due to the new information regarding the rental of this
12 particular rental car, the Grand Jury may ask that perjury
13 charges be brought against her and her husband?

14 **A.** That was expressed.

15 **Q.** Okay, so there was a conversation in the front lobby of
16 her place of employment?

17 **A.** It was the lobby not the front lobby.

18 **Q.** Voices were a little bit raised?

19 **A.** Yes, that's correct.

20 **Q.** Her perception was that it was a lot louder?

21 **A.** I can't say what her perception was.

22 **Q.** You told her that you thought the car had been used at the
23 University of Washington?

24 **A.** I do believe that.

25 **Q.** And Mr. Friedman said we may charge you with perjury,

1 right?

2 **A.** No, he never said we may charge you with perjury.

3 **Q.** The Grand Jury -- we may ask the Grand Jury to return an
4 indictment for perjury?

5 **A.** He did not word it like that either.

6 **Q.** He worded it, the Grand Jury may ask that perjury charges
7 be brought against her and her husband?

8 **A.** That's more accurate.

9 **Q.** Now, you got records at some point I think you said -- you
10 got records from Mr. Corri na and Ms. Larson's checki ng
11 account?

12 **A.** We did.

13 **Q.** You got records from her di scover card?

14 **A.** That's correct.

15 **Q.** You reviewed all the cancel ed checks from thei r account
16 from 2001; is that right?

17 **A.** I don't know that we had copies of every singl e cancel ed
18 check, but I reviewed a number of cancel ed checks.

19 **Q.** Is it fair to say that there were records of checks that
20 Ms. Waters, that were written to Ms. Waters as well, right?

21 **A.** I'd have to review the checks to know that for sure.

22 **Q.** Well, let's move on. Why don't you take a look at what's
23 been marked for identi fi cation as A-206.

24 **A.** It appears to be a photocopy of a check written by Kara
25 Larson and Robert Corri na's account.

1 Q. It's actually four checks, is that not correct, four
2 pages?

3 A. That's correct.

4 Q. I will move for admission of what's been marked for
5 identification as A-206?

6 MR. BARTLETT: No objection.

7 THE COURT: Admitted.

8 (Exhibit No. A-206 admitted.)

9 BY MR. FOX:

10 Q. The first page is a check dated May 19, 2001?

11 A. That is the date on top of the check.

12 Q. It's to Intercity Transit?

13 A. That's correct.

14 Q. This is May 19, right?

15 A. That's correct.

16 Q. The second page appears to be what?

17 A. That's a check written to Robert Provalosi on May 21,
18 2001.

19 Q. Next page?

20 A. A check written to Otto's, on May 21, 2001.

21 Q. That's a restaurant in Olympia?

22 A. I am not familiar with what it is.

23 Q. Robert Provalosi is a chiropractor?

24 A. What was the question?

25 Q. Robert Provalosi, is he a chiropractor?

1 **A.** I do not know that.

2 **Q.** And then finally, the fourth page is a check from May
3 22nd?

4 **A.** That's correct.

5 **Q.** Also to InterCity Transit?

6 **A.** That's correct.

7 **Q.** It says right on the bottom right corner -- you testified
8 on direct that you -- that the FBI searched Mr. Rodgers's
9 home?

10 **A.** That's correct.

11 **Q.** There were a number of things seized in that search,
12 right?

13 **A.** Yes, there were.

14 **Q.** There's also a lot of political literature laying about
15 the house, right?

16 **A.** It was a book store that carried a lot of political
17 literature.

18 **Q.** Turning your attention to what's been marked for
19 identification as A-204.

20 **A.** That's correct.

21 **Q.** Now, not everything in Mr. Rodgers's residence or
22 literature was about arson?

23 **A.** That's correct.

24 **Q.** Can you identify what's marked as A-204?

25 **A.** A 204 is a document that's titled "198 methods of

1 nonviolent action."

2 Q. And where was this located, or where did this come from?

3 A. At some place in Mr. Rodgers' home.

4 Q. I would move for the admission of A-204?

5 MR. BARTLETT: No objection.

6 THE COURT: Admitted.

7 (Exhibit No. A-204 admitted.)

8 BY MR. FOX:

9 Q. So in addition to items about arsons, you have this
10 document, methods of nonviolence action, that's correct?

11 A. That's correct.

12 Q. So is it fair to say, as you said before, there's lots of
13 different things in this home?

14 A. There was a large variety of literature in this house.

15 Q. Now, just going back for one second to these checks that
16 we talked about from Ms. Larson, we talked about a check for a
17 bus pass on May 22?

18 A. Yes.

19 Q. And bus pass on May 19?

20 A. That's correct.

21 Q. There was no record of bus passes on May 20 or May 21, any
22 evidence of payment for one that you found?

23 A. That's correct.

24 Q. So is it fair to say, I guess she could have paid cash for
25 it, right, if she needed one?

1 **A.** I believe that's how most people probably paid.

2 **Q.** She apparently used a check to pay for bus passes?

3 **A.** Yes, on some situations, she did.

4 **Q.** On the 19th and 22nd of May; is that correct?

5 **A.** That's correct.

6 **Q.** And this rental car was picked up I believe on the 19th of

7 May?

8 **A.** That's correct. Around noon on the 19th.

9 **Q.** And checked in on 6:33, checked in, I logged in on May 22?

10 **A.** That's correct.

11 **Q.** So, is it fair -- I will move on. Now on direct you

12 talked about a search of Mr. Rodgers' computers, right?

13 **A.** That's correct.

14 **Q.** And he had a number of computers, right?

15 **A.** He had a number of computers and large number of disks and

16 different types of media.

17 **Q.** And the FBI has a forensic computer laboratory?

18 **A.** Yes.

19 **Q.** You brought all these things to the 550 -- someone brought

20 these to the FBI forensic computer laboratory?

21 **A.** Yes.

22 **Q.** And they did a whole bunch of searches on these things?

23 **A.** Yes, searches were done by the agents associated with the

24 case. The laboratory loads it onto a system that allows us to

25 look at it in a forensic way.

1 **Q.** You yourself did some of the searches?

2 **A.** I did.

3 **Q.** Is it not correct in all of the computers and digital
4 media that you seized, that the FBI seized from Mr. Rodgers's
5 house, there's only one mention of Briana Waters?

6 **A.** That's correct.

7 **Q.** And actually the mention of Ms. Waters comes in the
8 context of some academic article about the environmental
9 movement, right?

10 **A.** Yes, it's in a bibliography concerning a thesis on Earth
11 First.

12 **Q.** The article mentions Ms. Waters' film?

13 **A.** That's referenced in the bibliography.

14 **Q.** That's the only reference on all of Mr. Rodgers' computer
15 media to Ms. Waters?

16 **A.** When I searched Ms. Waters --

17 **Q.** Mr. Rodgers?

18 **A.** Mr. Rodgers' computer media I only found reference to
19 Ms. Waters in that instance. I found one reference to Joseph
20 Di bee, one reference to Ms. Kolar and an article by Lacey
21 Philabaum. I did not find any connections to any of the
22 other defendants in this case or the Portland arsons.

23 **Q.** But the only reference was someone -- a footnote in an
24 academic article about the environment?

25 **A.** That's correct.

1 THE COURT: All right. Let's take the break at this
2 point. Give you your morning recess. As always, don't
3 discuss the case. Take advantage of the break. Leave your
4 books on the chair. I will have you back in here in about 15
5 minutes.

6 (Jury not present.)

7 THE COURT: All right. If nothing else, we will take
8 the morning recess.

9 THE CLERK: All rise, Court is in recess.

10 (Morning recess.)

11 (Jury not present.)

12 THE COURT: All right. You may be seated.

13 Are we ready to continue?

14 MR. FOX: Yes, Your Honor.

15 THE COURT: Bring in the jury.

16 (Jury present.)

17 THE COURT: You may be seated.

18 Mr. Fox.

19 BY MR. FOX:

20 Q. Resuming where we were, Agent Halla, we were talking about
21 going through Mr. Rodgers' computers?

22 A. Yes. That's correct.

23 Q. I believe that we've seen a number of copies of the manual
24 "Setting Fires With Electrical Timers"; is that correct?

25 A. That's correct. I believe we've seen a copy from

1 Mr. Rodgers' computer, and one from the ELF website.

2 **Q.** Turning your attention to that manual and the page out of

3 it that's been admitted as Exhibit 402. There's a section on

4 creating a clean room, is there not?

5 **A.** There is.

6 **Q.** Isn't it correct that it says, "To set up a clean room,

7 choose a location where your hair and skin flakes are not

8 already floating around." Is that right?

9 **A.** That's what the text says.

10 **Q.** Basically, this manual is like a how-to manual on how to

11 build these things?

12 **A.** It gives advice on those matters.

13 **Q.** Sure. One of the things that Mr. Rodgers -- is it

14 Mr. Meyerhoff who also coauthored this with Mr. Rodgers?

15 **A.** He did contribute to portions of it, I understand.

16 **Q.** One of their pieces of advice is that you are supposed to

17 do this some place other than where you live, right?

18 **A.** That is what the manual says, but we know they didn't

19 always do that. The clean room for the Susanville arson was

20 at Mr. Di bee's residence.

21 **Q.** But according to the manual, you are not supposed to do it

22 that way, right?

23 **A.** I believe the manual describes ideal situations, yes.

24 **Q.** Didn't Ms. Kolar testify yesterday that she and Mr. Di bee

25 didn't know there was going to be an arson -- testify on

1 Thursday -- that they didn't know there was going to be an
2 arson until they got down to Susanville? Is that your memory?

3 **A.** I believe that was Ms. Kolar's testimony, it was her
4 understanding that her and Mr. Di bee did not know that.

5 **Q.** Then also on Mr. Rodgers' computer there was something
6 that's been admitted into evidence as 5151 and that is a
7 document called, "Planning the Raid," right?

8 **A.** That's correct.

9 **Q.** That also was like a how-to manual on how to do these
10 types of actions, right?

11 **A.** I don't know what Mr. Rodgers' intent was but --

12 **Q.** That's what it appears to be?

13 **A.** That's what it appears to be.

14 **Q.** Again, you didn't find any of these manuals at Briana
15 Waters' house, right?

16 **A.** I think I have stated that we did not search Ms. Waters'
17 house.

18 **Q.** They weren't laying out on the coffee table when you were
19 in the house?

20 **A.** I was never inside her house.

21 **Q.** They weren't in the back yard by the garden chairs?

22 **A.** I did not see them outside.

23 **Q.** Now, this book "Planning the Raid," it actually recommends
24 to make a timeline, right?

25 **A.** It does.

1 **Q.** The manual talks about, does it not, "Electrical timers
2 and igniters should be built the week before the action so
3 there is no rush to assemble them," right?

4 **A.** That's what this says.

5 **Q.** It also says, "Plan to have all preparations done at least
6 24 hours before the raid," right?

7 **A.** That's what this says.

8 **Q.** It also says, "This includes getting the vehicle ready,
9 wiping everything free of fingerprints and getting the radio
10 in working order," right?

11 **A.** That's correct.

12 **Q.** The final 24 hours are supposed to be for sleeping in
13 late, right?

14 **A.** That's correct.

15 **Q.** Eating a relaxed dinner together, right?

16 **A.** That's correct.

17 **Q.** And reviewing the plan one last time, right?

18 **A.** That's correct.

19 **Q.** So Mr. Rodgers' how-to manual says to get the car ready
20 before the day of the action, right?

21 **A.** Yes. What I found significant about these two documents,
22 Chapter 5 and Chapter 6 that's been entered into evidence, is
23 that, according to the computer forensics, it was created
24 after the UW arson.

25 It was created between July 14th and July 17th. Some of

1 the portions in this I thought were significant because
2 understanding -- and the way I read it is that I think
3 Mr. Rodgers -- I suspect Mr. Rodgers learned some things from
4 the UW arson and incorporated it into this text. Earlier
5 versions of these chapters do not have some of this material
6 that's in these.

7 **Q.** You don't know what he may have written out by hand and
8 destroyed?

9 **A.** That's correct.

10 **Q.** The next page has a suggested timeline, does it not?

11 **A.** That's correct. That was one of the things I found
12 significant in this chapter was this timeline and the idea of
13 eating dinner so late at night, which is -- Ms. Kolar and
14 Ms. Philabaum talked about when they meet at Greenlake Bar &
15 Grill. I have not seen this timeline in any other version of
16 the manual that was written before the UW arson.

17 **Q.** Sure. Well, the point is that if you follow this timeline
18 of the ideal arrival time as 1:00 a.m., the hangout time at
19 the beginning starts at 5 p.m.?

20 **A.** That's what the manual says.

21 **Q.** Sure. And this includes a 90-minute drive, right? A
22 hypothetical driving time of 90 minutes, right?

23 **A.** That's what the text says.

24 **Q.** The next section, "Getting the Vehicle Ready" says, "Get
25 the vehicle ready 36 hours in advance," right?

1 **A.** That's correct. And I found this significant also because
2 I did not see this referenced, the 36 hours, in earlier
3 chapters that, according to the forensics, were created prior
4 to the UW arson.

5 **Q.** But that's what his manual recommends, 36 hours in
6 advance?

7 **A.** Yes.

8 **Q.** There's also -- in 502, there was another document that
9 was admitted, 515-D. One of the pages of the document says,
10 "Beware of automatic vehicle locators," right?

11 **A.** That's correct.

12 **Q.** And it also talks about Onstar systems, right, which are
13 tracking systems, right?

14 **A.** Yes, Onstar is associated with GM vehicles.

15 **Q.** In fact, sometimes in rental cars -- they have tracking
16 devices on rental cars, right?

17 **A.** I have no personal knowledge of that. That may be true.

18 **Q.** Is it fair to say that Olympia is about 60 miles from
19 Seattle?

20 **A.** That's an approximation.

21 **Q.** The Greenlake Bar & Grill is on the north side of Seattle,
22 right?

23 **A.** That's correct.

24 **Q.** Is it fair to say that the center of Olympia might be
25 Capitol Way South and Fourth Avenue West?

1 **A.** I wouldn't know where the center of the city is.

2 **Q.** It's kind of the center of downtown, right?

3 **A.** That's correct.

4 **Q.** So if you go from the center of Olympia to the north side
5 of Seattle, what's your estimate about mileage?

6 **A.** I drove a route leaving from Mr. Corrina's house, directly
7 to the Greenlake Bar & Grill, drove directly to the UW
8 horticulture center to 44th Street, where we believe the
9 vehicle was parked.

10 I then drove back to Greenlake Park, and then drove back
11 to Mr. Corrina's house, driving the most efficient route that
12 I could come up with, and it came out to 129 miles.

13 **Q.** What's the distance from Mr. Corrina's house to the Center
14 for Urban Horticulture?

15 **A.** I didn't drive that exact distance. I drove the route and
16 just recorded the total distance.

17 **Q.** So do you know what each part of that trip took, how long?

18 **A.** I didn't time it, no.

19 **Q.** Let's say hypothetically that it was 60 plus miles from
20 the center of Olympia, from the center of downtown, to the
21 Greenlake Bar & Grill.

22 MR. BARTLETT: Objection, Your Honor. He's indicated
23 what he knows. Clearly, if it was 65 miles, it would be over
24 what he's just described the route he took. So we are going
25 to get into a hypothetical that he has no basis on.

1 MR. FOX: I will move on. I will ask another
2 question.

3 BY MR. FOX:

4 Q. Why don't you look at what's been marked for
5 identification as A-209.

6 Can you identify that?

7 A. This is a Mapquest written from Capitol Way South and
8 Fourth Avenue to 3501 NE 41st Street.

9 Q. The second address, 3501 NE 41st Street, that's the
10 address for the Center for Urban Horticulture?

11 A. I don't personally know that.

12 Q. Well, look at A-208. Let's go back. Hypothetically, if
13 3501 NE 41st is the address for Center for Urban Horticulture,
14 how much distance is there between Capitol Way and Fourth
15 Avenue West?

16 MR. BARTLETT: Objection. He's indicated he doesn't
17 know the distances. He's indicated what he does know. He
18 can't talk about hypotheticals on guessing what mileage is.

19 THE COURT: Mr. Fox, let me handle this. I don't
20 know what you are getting at. Are you getting at -- he's
21 given you what he drove it to be.

22 MR. FOX: Well, I am inquiring as to what the
23 distances between Olympia and Center for Urban Horticulture
24 are.

25 THE COURT: It's not a hypothetical. If he knows

1 exactly, he can give you that.

2 MR. FOX: Sure. Okay. I would offer, by the way,

3 A-209 for illustrative purposes only.

4 MR. BARTLETT: It isn't for illustrative. He wants
5 the Mapquest information in, Your Honor, and he can get it in.
6 It's just not through this witness. It's irrelevant through
7 this witness.

8 THE COURT: Mr. Bartlett, let me have you go at that
9 another way.

10 MR. FOX: Okay.

11 BY MR. FOX:

12 Q. Did you ever clock the mileage between Olympia and the
13 Center for Urban Horticulture?

14 A. No, I did not.

15 Q. What is your best estimate as to the distance?

16 A. I would estimate 60 miles, but I have no reason to know
17 whether that would be correct or not.

18 Q. Is it fair to say that the Greenlake Bar & Grill is north
19 of the Center for Urban Horticulture?

20 A. It's approximately northwest.

21 Q. How far, based upon your best estimate?

22 A. Best estimate, three to four miles.

23 Q. So, under normal traffic conditions, driving from Olympia
24 to the Center for Urban Horticulture, if you go the speed
25 limit, how long do you think it would take on a normal -- with

1 normal traffic?

2 **A.** I don't know what normal traffic from one day to the next
3 is. I would be sitting in traffic for an hour, so I don't
4 know what normal traffic is.

5 **Q.** Let's say you drove it 55, 60 miles per hour -- let's say
6 you drove a little under the speed limit, how long would it
7 take to go from Olympia to the Center for Urban Horticulture?

8 **A.** I would guess approximately an hour-and-a-half.

9 **Q.** May is boating season, right?

10 **A.** I don't know when boating season is.

11 **Q.** If you take the most efficient route from Olympia to the
12 Center for Urban Horticulture, first of all, you have to go
13 through Tacoma, correct?

14 **A.** Yes.

15 **Q.** You go on I-5, right?

16 **A.** That would be the most efficient route.

17 **Q.** There might be -- possibly there might be traffic outside
18 the Tacoma Dome? Don't know?

19 **A.** Fort Lewis, Tacoma Dome, yes.

20 **Q.** You have to go through downtown Seattle, right?

21 **A.** That's correct, unless you came in from the east side.

22 **Q.** Okay. But the most efficient route would be through
23 downtown or through the east side?

24 **A.** Through downtown.

25 **Q.** There might be traffic in downtown Seattle, right?

1 **A.** That's correct.

2 **Q.** You have to go on 520, right?

3 **A.** That's not how I would go.

4 **Q.** How would you go?

5 **A.** I would take 45th and go straight, east on 45th.

6 **Q.** Okay. There might be some event in the University

7 District, right?

8 **A.** Possibly.

9 **Q.** There might be traffic there. With traffic, it could be

10 more than an hour-and-a-half?

11 **A.** Absolutely.

12 **Q.** So if you were going from Olympia to the Center for Urban

13 Horticulture and taking bags of fuel and putting them by a

14 dumpster, can you time how long it would take to carry the

15 bags of fuel to the dumpster we saw the other day?

16 **A.** From what starting point?

17 **Q.** From wherever -- if you end up at the Center for Urban

18 Horticulture, in that area, and you wanted to walk or drive to

19 where that dumpster was, where Ms. Philabaum said they had

20 stored some of the fuel ahead of time, do you know how long

21 that would take to carry that fuel?

22 **A.** No, I don't.

23 **Q.** Would it be fair to say it could take 15 minutes or so?

24 **A.** It's possible. I have no idea how long it would take.

25 **Q.** Then you have to drive from the Center for Urban

1 Horticulture to the Greenlake Bar & Grill?

2 A. If that's your destination, yes.

3 Q. It might be easy-going, there might be traffic, right?

4 A. That's correct.

5 Q. Actually, if you drive across Seattle, Seattle sometimes

6 is difficult to go east to west?

7 A. It's difficult to go many directions in Seattle.

8 Q. It would take what another 10, 15 minutes to get to the

9 Greenlake Bar & Grill?

10 A. I have no way to estimate what it might be.

11 Q. You've never driven from the Center for Urban Horticulture

12 to the Greenlake Bar and Grill?

13 A. I did on two occasions.

14 Q. Do you remember how long it took you?

15 A. I wasn't timing it, but I would estimate 10, 15 minutes.

16 Q. If it was an hour-and-a-half in good traffic, two hours in

17 heavy traffic to the Center for Urban Horticulture, another 15

18 minutes or so, 10, 15 minutes to go to the dumpsters, and then

19 another 10 minutes to the Greenlake Bar & Grill, we are

20 talking two-and-a-half hours or so?

21 A. That's true. I don't know that we know at what time the

22 fuel was dropped off by those containers. If it was earlier

23 in the day on a previous day, we don't know.

24 Q. We don't know. But let's say this had taken place; we are

25 talking maybe two hours, two-and-a-half hours?

1 **A.** It's possible.

2 **Q.** So if your target to get to the Greenlake Bar & Grill was
3 approximately 8:00, what time do you approximately have to
4 leave Olympia?

5 **A.** I don't know that that was a target time that they were
6 looking to get there. My understanding was late in the
7 evening. That could be any time.

8 **Q.** Sure. Wasn't there testimony that it was 8:00 maybe, I
9 think is what Ms. Kolar said?

10 **A.** I'd have to review the transcripts.

11 **Q.** You don't remember? Yesterday, you testified that you got
12 Ms. Kolar's bank records from the Washington State Employees
13 Credit Union, right?

14 **A.** That's correct.

15 **Q.** You noticed that there were two transactions on her credit
16 card statement that were listed as being May 21st, right?

17 **A.** That's correct.

18 **Q.** But one was a Kinko's transaction and that actually took
19 place on May 19th, right?

20 **A.** Yes. A little over midnight, past midnight.

21 **Q.** Do you have A-170 in front of you?

22 **A.** What was the number?

23 **Q.** A-170. Can you please identify that?

24 **A.** This is a letter from FedEx/Kinko's Company in response to
25 a subpoena that was sent to them.

1 8. There are some records attached to that as well?

2 A. Yes, as a certification of business records and what looks
3 to be a computer screen printout.

4 MR. FOX: I would offer A-170.

5 MR. BARTLETT: No objection.

6 THE COURT: Admitted.

7 (Exhibit No. A-170 admitted.)

8 | BY MR. FOX:

9 Q. This is the document that you referred to, to find out
10 that the credit card or the ATM transaction took place on May
11 19th at 12:10 a.m.?

12 | A. Yes, that's correct.

13 Q. Even though the bank bill or bank statement says it was
14 posted on the 21st, right?

15 **A.** Yes, the bank statement is somewhat vague. It doesn't
16 tell us when it was posted or what the transaction date was.

17 Q. You also testified, did you not, that you attempted to
18 find out the timing of the other transaction that was posted
19 on May 21st, right?

20 A. That's correct.

21 Q. This was a transaction with Ralph's Thriftway in Olympia?

22 A. That's correct.

23 Q. A grocery store in Olympia?

24 A. Yeah, it's a grocery store that's a couple blocks from
25 Mr. Rodgers' house.

1 **Q.** Okay. You said that you had some difficulties finding the
2 exact -- difficulties finding the records for that
3 transaction?

4 **A.** Yes, the store, because of the change in their computer
5 systems, was not able to tell us what time the transaction had
6 taken place. They had given us a data tape that they
7 indicated may have had some backup information, but it turned
8 out to be a corrupt tape and we weren't able to pull any data
9 off it.

10 **Q.** Isn't it correct that Ralph's actually does have
11 information about the timing of that transaction?

12 **A.** I am not aware of any.

13 **Q.** Well, I will hand you what's been marked for
14 identification as A-212. Take a look at that for a second and
15 identify it. Can you identify that for the record?

16 **A.** This is a response to a subpoena from Ralph's Thriftway.

17 **Q.** What else does it contain?

18 **A.** It has Ralph Thriftway's -- it looks like register
19 records.

20 MR. FOX: I would offer what's been marked for
21 identification as A-212.

22 MR. BARTLETT: Just for the record to clarify, Your
23 Honor. It's a subpoena from Mr. Fox. It isn't a subpoena
24 that Special Agent Halla issued.

25 MR. FOX: I would offer these records.

1 MR. BARTLETT: No objection.

2 THE COURT: Admitted.

3 (Exhibit No. A-212 admitted.)

4 BY MR. FOX:

5 Q. Turning your attention to the third page -- Let's back up
6 for one second.

7 The last two pages of that document. Why don't you take a
8 look. This appears to be a duplicate of the bank records that
9 were introduced yesterday?

10 A. That's correct.

11 Q. And that's for account number 2633428?

12 A. It's blocked on the screen. I can't see the account
13 number. There you go, 2633428.

14 Q. And then the second page, or the next page, references the
15 transactions we were talking about yesterday; is that correct?

16 A. That's correct.

17 Q. May 21st, \$13.91?

18 A. That's correct.

19 Q. \$13.91, right there, May 21st, right?

20 Now, Let's turn back to the third page of this document,
21 and this appears to be a listing of all the swipes, customer
22 detail by lane reports at Ralph's Threeway, right?

23 A. That's correct.

24 Q. If you go down to the highlighted portions, it says debit,
25 5-20-01, May 20, 2001?

1 **A.** That's correct.

2 **Q.** And the timing is 19:12? That's military time?

3 **A.** Correct.

4 **Q.** That's what time on standard time?

5 **A.** It would be 7:12 p.m.

6 **Q.** There's a transaction for \$13.91?

7 **A.** That's correct.

8 **Q.** Then the card number is 2633428; is that correct?

9 **A.** That's correct.

10 **Q.** That's the same account that Briana Waters' card is on

11 from the Washington State Employees Credit Union?

12 **A.** I don't know her card number offhand.

13 **Q.** Well, it was the number you just read before.

14 **A.** It contains that portion of her account number.

15 **Q.** Ms. Waters' debit card was used at 7:12 p.m. on May 20,

16 2001; is that correct?

17 **A.** That's what these records say.

18 **Q.** Is it fair to say that it would be very difficult for her

19 to be in Seattle at 8 p.m. at the Greenlake Bar & Grill if she

20 drove the speed limit?

21 **A.** If they met at 8 p.m. that would be a hard time to reach.

22 **Q.** Sure. Even if it was 8:15 p.m. it would be hard?

23 **A.** That's correct.

24 **Q.** Even if you made a stop at the dumpsters, or especially if

25 you made a stop at the dumpsters; is that correct?

1 | **A.** That's correct.

2 MR. FOX: I have no further questions.

3 MR. BARTLETT: Just a few.

REDIRECT EXAMINATION

5 BY MR. BARTLETT:

6 Q. Special Agent Halla, why don't you tell the members of the
7 jury, what did you try to do to find these records?

8 You have never seen these records before, correct?

9 A. I have not. I talked to the owner of Ralph's Thriftway
10 and explained to him what we were looking for. I actually met
11 with him on two occasions. The second time is when they
12 pulled out these data tapes that they thought would have had
13 the register receipts.

14 Q. So it isn't something that you had this record and you've
15 been hiding it from anybody?

16 A. Absolutely not. I searched hard for these records and I'm
17 a little perturbed that I did not find out about them.

18 Q. I want to ask, just because it was a little confusing in
19 my mind. During cross-examination, there was some discussion
20 about the letter that you found when you went into Justin
21 Solondz' cabin at the time of the search.

22 | Do you remember those questions?

23 A. Yes, I do.

24 Q. We read this letter, and as part of this letter it talks
25 about this -- kind of the first bullet point, there are

1 garbage bags of your clothes in the attic space above the
2 living room, which is accessed by way of the sleeping loft; do
3 you see that?

4 **A.** Yes, I do.

5 **Q.** You actually introduced and went through garbage bags of
6 clothes. Is this the same garbage bags of clothes?

7 **A.** No, it's not. When I talked to Toni e Woodman, she was
8 very specific about where her personal belongings were, and we
9 did not want to search her personal belongings, and she had a
10 loft, and we looked up there and, based on what we saw from
11 peripheral view, it looked like her items. So we did not
12 search the loft as that was not -- our search warrant wasn't
13 to cover her items.

14 Where we found the bag that had the clothes and the shower
15 caps was in a back room on the first level where we were
16 finding other items that belonged to Justin Sondz.

17 **Q.** During cross-examination, there was a discussion about the
18 interview with Jennifer Kolar that occurred on March 6th of
19 2006. Do you recall that?

20 **A.** That's correct.

21 **Q.** That was the first interview after December 16th where you
22 discussed in depth the University of Washington arson; is that
23 correct?

24 **A.** That's correct.

25 **Q.** Was anything happening the following week that prompted

1 you to bring in Ms. Kolar at that point in time?

2 **A.** We were going to be going to the Grand Jury and present
3 evidence regarding Ms. Waters.

4 **Q.** There was a number of questions about Capitol Hill Girl,
5 her punk boyfriend, Crazy Dan, and your questions or lack of
6 questions with regard to follow-up discussions with Ms. Kolar.

7 Do you remember those questions during cross-examination?

8 **A.** I do.

9 **Q.** Can you explain to the members of the jury what was going
10 on with regard to your investigation? Not just kind of the
11 narrow view; the overall view of the investigation.

12 **A.** We were investigating, you know, every name that was given
13 to us, to find out who they were and determine if they had any
14 involvement in any of these crimes, whether it was
15 specifically at the University of Washington arson, if they
16 were involved in some of the book club meetings. So we were
17 chasing down every lead that we could.

18 We determined that Crazy Dan was likely Jake Ferguson, who
19 we had interviewed numerous times earlier through 2004, 2005.
20 He had been involved in one reconnaissance trip with the
21 Jefferson Poplar arson but had no information --

22 MR. FOX: I object on hearsay.

23 THE COURT: He's saying what he was doing. You asked
24 the question as to why.

25 MR. FOX: But what Jake Ferguson says is hearsay.

1 THE COURT: Don't go into what he said, but what you
2 were doing.

3 BY MR. BARTLETT:

4 Q. Did you have direct discussions with Jake Ferguson as to
5 what actions he was involved in?

6 A. Yes, I did.

7 Q. With regard to his -- the information he provided to you,
8 did you make at least a tentative determination on whether or
9 not he was involved in the University of Washington arson?

10 MR. FOX: Again, Your Honor, it calls for hearsay.

11 MR. BARTLETT: It doesn't.

12 THE COURT: He can say what he did.

13 MR. BARTLETT: What's in his mind.

14 THE COURT: You can say what you did.

15 A. I determined that Jake Ferguson was not involved in the UW
16 arson.

17 BY MR. BARTLETT:

18 Q. Ms. Kolar testified and you described that at some point
19 in early January, she identified a picture of Suzanne Savoie
20 as being Capitol Hill Girl. Do you remember that?

21 A. Yes. She associated with Horace the butcher, the daughter
22 who we associated with Capitol Hill Girl.

23 Q. With regard to Suzanne Savoie, was she the subject of any
24 investigation in the District of Oregon?

25 A. Yes. The District of Oregon was investigating her role in

1 the Jefferson Poplar arson and, I believe, the arson of
2 Superior Lumber. At the Jefferson Poplar arson --

3 Q. Without going into -- the District of Oregon was
4 investigating -- and I believe you described that on
5 approximately January 20th of 2006, the District of Oregon
6 actually returned an Indictment?

7 A. They did. They did indict.

8 Q. After that Indictment, was Ms. Savoie arrested and in fact
9 made the decision with regard to cooperation or lack of
10 cooperation?

11 A. Yes, Ms. Savoie decided to cooperate.

12 Q. And before the end of -- before the beginning of February,
13 were you aware of the contents of her cooperation, the subject
14 matter that she had disclosed to the investigators in Oregon?

15 A. I did.

16 Q. As a result of those other leads, were you able, in your
17 mind, to answer questions with regard to Crazy Dan, Capitol
18 Hill Girl, her punk boyfriend, without directly talking with
19 Ms. Kolar?

20 A. I did.

21 MR. BARTLETT: Nothing else, Your Honor.

22 THE COURT: Anything further?

23 RECROSS-EXAMINATION

24 BY MR. FOX:

25 Q. The bag of clothing that you say you found in the back

1 room, Agent Halla?

2 A. That's correct.

3 Q. It was just left there, right?

4 A. The back room -- there was a back room and then kind of
5 what I would describe as a closet space off in -- there was a
6 bunch of storage tubs, garbage bags, boxes. It was literally
7 up to our waist, and we had to pull each one out separately to
8 search it.

9 Q. It wasn't buried in the backyard in the dirt?

10 A. No, it was not.

11 MR. FOX: I have no further questions.

12 MR. BARTLETT: Nothing further, Your Honor.

13 THE COURT: All right, you may step down.

14 MR. BARTLETT: Your Honor, at this time the United
15 States rests.

16 MR. FOX: Your Honor, we have some matters we should
17 take up outside of the presence of the jury.

18 THE COURT: Let me have you just step out for a
19 minute. Leave your books on the chair and don't discuss the
20 case.

21 (Jury not present.)

22 THE COURT: You may be seated.

23 Mr. Fox.

24 MR. FOX: Your Honor, we would make a motion to
25 dismiss based on lack of sufficiency of the evidence. There's

1 a couple parts to this.

2 At least for Count 1, the conspiracy count, we believe
3 that the Government's proof differs materially from the
4 allegation of conspiracy as alleged in the Indictment, in the
5 Fourth Superseding Indictment, and that they haven't proven
6 that Ms. Waters was part of the conspiracy as they alleged in
7 the Indictment.

8 They may have offered some evidence that she was part of
9 another conspiracy, but as for the conspiracy count alleged,
10 they have simply failed to prove that. So we believe that as
11 regards to Count 1, there's a lack of sufficient evidence.

12 With regards to the other counts, we also believe there's
13 insufficient evidence, and we would ask that the Court dismiss
14 this Indictment to this point.

15 All right.

16 MR. BARTLETT: Your Honor, with regard to the
17 conspiracy, I think the evidence is fairly compelling. The
18 fact that Ms. Waters is a member of this conspiracy after it
19 begins and even before it ended is of no moment to the Ninth
20 Circuit and the Supreme Court.

21 In addition, I would direct the Court's attention to
22 actually an answer given by Ms. Kolar on cross-examination,
23 when Mr. Fox was asking her about whether she really believed
24 in genetic engineering, and in substance her answer was: "As
25 a scientist, I was actually kind of mixed about it, but what I

1 believed in was in this movement's ability to have a
2 successful operation, and that's why I went on the UW arson,
3 and that's why I went to Susanville, because I believed in the
4 overall goal of this group's activities, and that's what I
5 wanted to support, and that's why there's one conspiracy in
6 this case, because that's how everybody felt."

7 If you look at the communiqués that are issued after each
8 and every one, they are dependent upon each other. The
9 University of Washington communiqué referenced in the
10 Jefferson Poplar, the Superior Lumber communiqué references
11 other actions being done, and other -- by ELF and ALF.

12 The entire ability of ELF and ALF to impact, at least in
13 their mind, was dependant on multiple actions over multiple
14 times over multiple locations. It is a single conspiracy.

15 THE COURT: All right. Anything else to add?

16 MR. FOX: Only if Your Honor can go back and look at
17 the Indictment. It is very different from the type of
18 evidence that's been presented in this case. It's a
19 completely different set of charges. There's some overlap for
20 one action, but other than that, the Government has not shown
21 any evidence that puts Ms. Waters in the conspiracy that they
22 alleged in the Fourth Superseding Indictment.

23 THE COURT: All right. Well, the Court has heard the
24 evidence overall in terms of the conspiracy and, of course,
25 the testimony of witnesses as to Ms. Waters' involvement.

1 What the Court is facing here is a motion as to whether or not
2 a *prima facie* case has been made as to whether this matter
3 should go forward and whether the jury that's here should be
4 the ones to determine whether these matters did in fact take
5 place.

6 The Court has already ruled on the conspiracy matter as to
7 the one versus numerous, and the Court is not going to change
8 the ruling on that because my conclusion was that it was a one
9 conspiracy thing, and the various acts that have been talked
10 about tend to show or -- it doesn't show, but it raises the
11 question as to her involvement and, if so, when. But as to
12 what the intent, if you will, of the movement -- call it what
13 you will -- was, the Court is satisfied that this matter
14 should go forward, so I am denying the motion.

15 MR. FOX: Your Honor, two other points. The Court
16 had made earlier rulings about the definition of destructive
17 devices, and the Court, in its pretrial orders, had made a
18 ruling as to what the Court is going to instruct the jury on
19 about destructive devices.

20 I would ask the Court, based upon the testimony that the
21 Court has heard from the scientists involved in this case as
22 opposed to the law enforcement officers' opinion, that the
23 Court change the ruling that it previously made based upon the
24 evidence that we've heard.

25 On that basis, if the Court changes the definition that it

1 says it is going to give, I would submit that there's
2 insufficient evidence that these are destructive devices, and
3 I would ask the Court to find, as a matter of law, that these
4 are not incendiary bombs and, therefore, dismiss the 924(c)
5 charge.

6 THE COURT: No, I think it comports with the -- the
7 jury will have to make the final decision as to whether or not
8 it fits that definition. The definition in the statute will
9 be set forth telling them what an incendiary bomb is, and they
10 either have to find it fits within that or it does not.

11 MR. FOX: Well, I am asking you to change the ruling
12 that you made saying what the definition is to comport with
13 the evidence that we've heard, which I respectfully submit is
14 different than what the Court said earlier.

15 THE COURT: It's noted, but I am going to let my
16 ruling stand.

17 MR. FOX: The final issue, and we might as well
18 address the motion I filed last night on those two exhibits
19 because part of my motion involves a motion for a mistrial, as
20 well as striking the exhibits or a curative instruction.

21 I don't know if the Court wants to address it at this
22 time.

23 THE COURT: You are talking about 402 and 612?

24 MR. FOX: Right. We objected to those exhibits
25 coming in at all. The inflammatory nature of those exhibits

1 is so great to talk about in the context of this case, after
2 hearing the evidence about University of Washington and
3 Susanville, to start introducing or to underscore to the jury
4 repetitively things about Disney and the Statue of Liberty
5 written by someone who isn't in court, has never been charged,
6 based upon some fine print articles and a collection of
7 articles that Ms. Kolar claims were given to her by Ms. Waters
8 but were never read, it's so inflammatory, so prejudicial,
9 that we would ask the Court first to declare a mistrial.

10 Secondly, to strike those portions of those articles as
11 being irrelevant and being overly prejudicial under 403 as
12 being hearsay, as we've argued before or, in the alternative,
13 to give a curative instruction to the jury in the manner I set
14 out.

15 I don't want this trial to be about Disney and. The trial
16 is about the University of Washington and whether Ms. Waters
17 was involved, and the jury is going to have the testimony of
18 Ms. Kolar, and they have to judge her credibility, and
19 Ms. Philabaum's, but to parade around as the prosecutor has
20 done the other -- something that someone who's not on trial
21 wrote is really misleading to the jury and prejudices them in
22 this post-911 climate.

23 THE COURT: All right. Respond to that.

24 MR. BARTLETT: Well, Your Honor, Mr. Bloom is
25 complaining about the selections that his own client made --

1 excuse me, Mr. Fox, I apologize -- Mr. Fox is complaining
2 about the selections his own client made to provide to her
3 coconspirator. She made the bed that she's now lying in. She
4 made the choices. She chose these articles. She provided
5 them to Jennifer Kolar. That is the reality.

6 This isn't a case where we went to somebody's home, where
7 they had thousands and thousands of books and we chose three
8 or four to misrepresent what they thought was important. She
9 has already told us she thought these items were important.
10 She's already told us that she wanted a coconspirator to read
11 them so they could discuss them together.

12 There's nothing at all either wrong or -- in fact, there's
13 nothing that could be more probative of what is in Briana
14 Waters' mind during this exact time period than these articles
15 and the words that are expressed within them.

16 With regard to what was on the ELF/ALF website is relevant
17 for two reasons. It shows what was in the mind-set of the
18 organization that was claiming credit for this arson, and in
19 addition, it shows the mind-set of ELF was exactly the
20 mind-set of this defendant at that exact point in time.

21 THE COURT: Well, let me put it this way. The Court
22 has already ruled on the exhibit, and I admitted the exhibit
23 and I admitted it because of the way it came, because the
24 evidence was showing that the Defendant gave this to the
25 witness. That was one of the reasons.

1 Now, as to the cautionary -- so I am going to let my
2 ruling stand. It will either be sufficient -- the Ninth
3 Circuit should look at it -- or it won't be sufficient. I
4 don't see any basis for that to grant any mistrial at this
5 point on anything that I have heard.

6 If the Ninth Circuit would see things different than I
7 have seen, of course they know what they can do with the whole
8 case. I have to call them as I see them, and they have to do
9 their job as they see it.

10 The other thing that's brought up here is about giving a
11 cautionary instruction. I don't see at this point the need to
12 give a cautionary instruction. My instruction would intend to
13 cover how they are to look at these folks that testified
14 against this Defendant and how to view the evidence. That's
15 their job.

16 So I am not going to filter it through and through as we
17 go through this case. I am going to let my ruling stand, and
18 we'll move forward with that explanation. You've made your
19 record. I guess we are talking about when we are ready to get
20 going here. We have about 25 minutes. I don't know who you
21 are going with first.

22 MR. BLOOM: We are ready to get going with Agent
23 Torres, but also we have two very short witnesses who are
24 going to meet us at lunch time, and I would like to ask to
25 interrupt Agent Torres in order to put them on.

1 MR. BARTLETT: If I could be briefly heard, Your
2 Honor. I am scratching my head as to the relevance of Special
3 Agent Tony Torres' testimony.

4 Prior to trial, in their -- I believe it was their trial
5 brief or maybe their motion in limine, the defense indicated
6 that no witness could be called strictly to be impeached. I
7 understand that. So I am merely asking for an offer of proof
8 as to what is Special Agent Tony Torres being called to
9 testify regarding.

10 THE COURT: Well, you can speak to that. I don't
11 want to assume anything.

12 MR. BLOOM: You are asking me to provide an offer of
13 proof?

14 THE COURT: Yes.

15 MR. BLOOM: He's going to testify about the contacts
16 with Ms. Philabaum, Ms. Kolar, Mr. Corrino, and other matters
17 that are not about impeaching Mr. Torres. There may also be,
18 depending upon what his testimony is -- I may want to impeach
19 him, but that's not the purpose of calling him. I frankly --

20 THE COURT: Is this about the 302 mainly, is that
21 what we are talking about?

22 MR. BLOOM: There may be some discussion about his
23 preparation of the 302, but that's not the import of it. But
24 I do want to point out, at no point did we ask for an offer of
25 proof as to any of their witnesses. I am very troubled by

1 their asking for that, A, and the Court requiring it.

2 I have given it because the Court has asked me to do it,
3 but we've had enough problems. We are trying to get witnesses
4 here. Ms. Waters is indigent. Because of the fact that she's
5 indigent, we have had to go through the Court. For example,
6 with Mr. Carr, the New York Times reporter. If she had money,
7 he'd have been here testifying. We wouldn't have had to talk
8 to the Court at all about it.

9 THE COURT: Well, I would still have to deal with the
10 nature of the testimony. I told you that was not the issue as
11 to what witnesses she should call. I had made a ruling on
12 this, and that's why I said I wasn't going to issue that.

13 MR. BLOOM: No, what I was pointing out was that the
14 Court would not have had to make a ruling at all had
15 Ms. Waters not been indigent, that we would have just called
16 him as a witness, and if there was an objection during his
17 testimony --

18 THE COURT: Well, we are going far afield now. Let's
19 get back to Mr. Torres. We are ready to proceed with him?

20 MR. BLOOM: I am.

21 THE COURT: Then you may call him.

22 MR. BARTLETT: Your Honor, I guess I am a little
23 confused. He says that he wants to call him about contacts.
24 My understanding is there's no contact between Tony Torres and
25 any of the individuals that he's mentioned, outside the

1 context of the 302 interview.

2 MR. BLOOM: It's in the context of an interview.

3 It's not a 302 interview. It's an interview, and if there's a
4 302 involved as well --

5 THE COURT: Let's have Mr. Torres. Are we ready to
6 proceed with him?

7 MR. BLOOM: I think so, if he's here.

8 THE COURT: All right. Bring him in.

9 (Jury present.)

10 THE COURT: All right. You may be seated.

11 The Government has rested as you now know. The defense
12 will begin their case.

13 MR. BLOOM: We call as our first witness, Special
14 Agent Anthony Torres.

15 THE COURT: Let Mr. Torres -- let me have you come
16 forward and be sworn.

17 ANTHONY TORRES, called as a witness, duly sworn.

18 DIRECT EXAMINATION

19 BY MR. BLOOM:

20 Q. Could you please state your name and your employment and
21 -- good morning.

22 I am sorry. Good morning to you first.

23 A. Good morning. My name is Anthony Torres. I am a
24 supervisory agent with the FBI.

25 Q. How long have you been with the FBI?

1 **A.** Just over 11 years.

2 **Q.** Have you and I ever met or spoken in any way?

3 **A.** No, we have not.

4 **Q.** Was it communicated to you at some point that we would
5 like to speak to you?

6 **A.** Yes.

7 **Q.** Did you agree to do that or not?

8 **A.** I agreed to come here and speak with you here today.

9 **Q.** I am sorry?

10 **A.** I agreed to come and talk to you here today.

11 **Q.** You agreed to come testify?

12 **A.** That's correct.

13 **Q.** Was there a previous time where it was communicated to you
14 that we would like to interview you some months ago?

15 **A.** Yes, that's correct.

16 **Q.** As to that request, did you agree to that or not?

17 **A.** No, I preferred to talk to you under oath in front of a
18 jury in a courtroom. That was my preference.

19 **Q.** So you did not agree to talk to us?

20 **A.** That's correct.

21 **Q.** Now, the University of Washington arson on May 20th, 21st,
22 of 2001, you are familiar with that?

23 **A.** Yes, I am.

24 **Q.** If it's more convenient, maybe if you put the microphone
25 in front of you, whatever. Just make yourself comfortable so

1 you will be able to speak through the microphone. Thank you.

2 Now, when did you begin work on the -- well, let me go
3 back. Were you in the Seattle office as of May of 2001?

4 **A.** I was.

5 **Q.** Were you a supervising agent at that time?

6 **A.** No, I was not.

7 **Q.** When did you become a supervising agent?

8 **A.** I became a permanent supervisory Special Agent in February
9 of last year.

10 **Q.** There was obviously some temporary status?

11 **A.** Yes. I have been, since fall of 2002, a temporary or a
12 relief supervisor for my squad -- my squads that I worked on.
13 I was an acting supervisor for about six months in 2006.

14 **Q.** Now, Agent Halla has testified that although you don't
15 really have partners in FBI work, that essentially in working
16 on this case you were more or less partners?

17 **A.** I think that's fair.

18 **Q.** Is that a reasonable description?

19 **A.** Yes.

20 **Q.** Do you remember what day of the week May 21, 2001 was?

21 **A.** May 21, 2001, was a Sunday -- Monday, so Monday.

22 **Q.** The 21st was a Monday?

23 **A.** Yes.

24 **Q.** When did you personally get involved in the investigation
25 of that incident?

1 **A.** I personally became involved in the investigation in the
2 fall of 2002.

3 **Q.** Is there a reason -- were you doing something else between
4 the time of the incident and fall of '02?

5 **A.** At the time of the arson, I was assigned to our drug and
6 organized crime squad. It's a separate squad within the
7 Seattle division.

8 **Q.** So you were aware that the agency, the Seattle office of
9 the FBI, was involved almost from the beginning; is that
10 correct?

11 **A.** That's correct.

12 **Q.** Was it Agent Halla who was what's called the case agent?

13 **A.** At the time of the arson?

14 **Q.** Who became the case agent at the time of the arson.

15 Well, who did? Was there a case agent?

16 **A.** At the time -- well, I wasn't assigned to the squad at the
17 time, but I believe the original case agent, when the arson
18 happened, was either Jane Stephan or Lee Yates, but I am not
19 certain on that.

20 **Q.** Did there come a time, to your awareness, that the U.S.
21 Attorney's Office became involved in the investigation?

22 **A.** Yes.

23 **Q.** And when would that have been?

24 **A.** I don't know exactly when they became involved in the
25 investigation.

1 **Q.** That would be before your own personal involvement?

2 **A.** Correct.

3 **Q.** The U.S. Attorney is actually a part of the branch of the
4 United States Department of Justice; is that correct?

5 **A.** Yes, that's correct.

6 **Q.** As of the year 2001, I think the Attorney General was
7 Ashcroft; is that correct?

8 **A.** I believe that's correct, yes.

9 **Q.** Then there came a time when he was replaced by Alberto
10 Gonzalez?

11 **A.** Yes.

12 **Q.** Is it fair to say that by the time you got involved in the
13 fall of '02, and the time the arrests were made on the Oregon
14 Indictment in December, what year was it, December of '05?

15 **A.** December of '05.

16 **Q.** By that time in December of '05, some four-and-a-half
17 years had gone by more or less with this crime unsolved; is
18 that correct?

19 **A.** More or less, yes.

20 **Q.** Is it fair to say that it was a very important -- it was
21 important work for you to try to solve this crime; is that
22 correct?

23 **A.** Yes, all of our investigations are important.

24 **Q.** Well, this one was a celebrated arson; is that correct?
25 Highly publicized?

1 **A.** There was a lot of publicity regarding this arson, yes.

2 **Q.** And it was your investigation, and the lack of information
3 was a little bit frustrating; is that fair to say?

4 **A.** It was -- well, I don't know if I would classify it as
5 frustrating. We didn't have much information in terms of
6 being able to solve the crime in the first couple of years.

7 **Q.** There were several crimes, a number of arsons, maybe 17 or
8 so arsons, for which the Earth Liberation Front took credit in
9 a period between 1996 and 2001; is that correct?

10 **A.** Yes.

11 **Q.** That was -- this was part of the effort -- trying to solve
12 this crime was part of the effort trying to solve those
13 crimes; is that correct?

14 **A.** Yes, that's correct.

15 **Q.** There came a time in 2004 --

16 MR. BARTLETT: Your Honor, objection. This isn't
17 cross-examination. This is actually direct examination, and I
18 have let it go on quite a bit, but the questions should not be
19 leading.

20 THE COURT: He's calling, I believe, this witness as
21 his witness.

22 MR. BLOOM: That's correct. Certainly, this is a
23 preliminary matter. Secondly, I am allowed to lead a witness
24 who would be regarded as an adverse witness.

25 THE COURT: Go ahead.

1 BY MR. BLOOM:

2 Q. You work for the FBI and I am the lawyer for Briana
3 Waters. We have adverse positions, don't we?

4 A. I wouldn't classify it as an adverse position. We have
5 different roles in the Government.

6 Q. Now, in 2004, there was a break -- Jake Ferguson, correct?

7 A. A break in the overall conspiracy? There was a break in
8 the case.

9 Q. The overall conspiracy.

10 A. Yes, there was.

11 Q. It was -- you got ahold of Jake Ferguson and he agreed to
12 cooperate; is that correct? The FBI did, not you personally,
13 the FBI?

14 A. Not me personally, but yes, he did agree to cooperate with
15 the FBI.

16 Q. By that time, 2004, you were actively involved in the UW
17 investigation; is that correct?

18 A. I was the co-case agent in the investigation, yes.

19 Q. With Agent Halla?

20 A. With Agent Halla, correct.

21 Q. Now, did there come a time when you understood that a
22 woman named Jennifer Kolar was going to come and talk to you?

23 A. Talk to me, yes.

24 Q. Talk to you, to Mr. Friedman and to Agent Halla; is that
25 correct?

1 **A.** That's correct.

2 **Q.** Did you come to learn that she had been contacted -- well,
3 did you see her on December 16th of 2005?

4 **A.** I interviewed her. I participated and interviewed her on
5 December 16th, yes.

6 **Q.** Did you come to learn that she had in fact been contacted
7 about five or six or even seven days before that by Agent
8 Qui mby, a woman from the Denver office; is that correct?

9 **A.** Yes, that would be agent Jane Qui mby.

10 **Q.** You understood that Ms. Kolar had been contacted and
11 either a message left or a communication that the FBI would
12 like her to get a lawyer and cooperate?

13 **A.** Yes. I don't know what the exact message was, but that
14 was essentially the message.

15 **Q.** To that effect?

16 **A.** Yes.

17 **Q.** So it was your understanding, as you saw her on December
18 16th, that here was a woman who had had at least a week to
19 think about what she was going to do, what she was going to
20 say?

21 **A.** Well, I don't know what she was thinking prior to that
22 meeting.

23 **Q.** No, I am just talking about the timing. I am not
24 suggesting you would know what she was thinking, but in terms
25 of her being made aware of the fact that she had to think

1 about what she was doing with regard to her activities, she
2 had about a week to think about it, at least; is that correct?

3 **A.** There was about a week from the time Agent Quimby
4 contacted Jennifer Kolar until she came and talked to us.

5 **Q.** Once you came to meet with Jennifer Kolar, and you met
6 with her several times; is that true?

7 **A.** I met with her three or four times.

8 **Q.** Isn't it fair to say you understood her to be a highly
9 intelligent person?

10 **A.** Before she came into the meeting?

11 **Q.** No, once you met her.

12 **A.** I would characterize her as an intelligent person.

13 **Q.** Do you know of her background? She's --

14 MR. BARTLETT: Objection, this is leading. This is
15 direct examination. He is not an adverse witness. They
16 called him. The questions should be nonleading, open-ended
17 questions.

18 MR. BLOOM: All right.

19 BY MR. BLOOM:

20 **Q.** Did you come to learn about her background?

21 **A.** Yes.

22 **Q.** What did you learn about her academic background?

23 **A.** I learned that she graduated from high school in Spokane.
24 I learned that she attended the University of Colorado in
25 Boulder. I believe she received a degree in applied

1 mathematics and was a Ph. D. candidate, at some point was a
2 Ph. D. candidate.

3 **Q.** When you spoke with her, did you have an impression of her
4 intelligence?

5 **A.** Well, based on her education and based on her position in
6 the community, I thought she was an intelligent person.

7 **Q.** How about based on how she spoke with you?

8 **A.** She was coherent, articulate.

9 **Q.** Now, did you come to understand, was she there with an
10 attorney on December 16th?

11 **A.** She was with her attorney.

12 **Q.** Would that have been Michael Martin?

13 **A.** That's correct.

14 **Q.** Was it your understanding that she was going to speak
15 about the incident at the University of Washington?

16 **A.** At some point I became aware that she was going to talk
17 about that arson, yes.

18 **Q.** Was it your understanding that she was going to confess to
19 that crime and perhaps others?

20 **A.** It was my understanding just prior to the meeting that
21 that's what she was going to confess to.

22 **Q.** What is one of the FBI regulations called? Something like
23 MI OG?

24 **A.** There's MAOP and there is MI OG.

25 **Q.** What are those? Could you please tell the jury what those

1 are?

2 **A.** Sure. They are administrative procedures or guidelines
3 which guide our investigations or which guide administrative
4 duties. It's basically a policy or a guideline book for the
5 FBI. There's two of them.

6 **Q.** Are there provisions in those guidelines -- is it fair to
7 describe them generally as guidelines? Is that a fair
8 description?

9 **A.** Yes, that's fair.

10 **Q.** Are there provisions in those guidelines for recording --
11 using either digital or tape recorder -- when you are speaking
12 to witnesses or suspects?

13 **A.** It's not our policy to record interviews or confessions.

14 **Q.** Well, let me just try to answer that question. Are there
15 provisions in the guidelines about doing that?

16 **A.** There are some provisions.

17 **Q.** When you say it's not your policy, it's not the FBI's
18 policy or not your policy?

19 **A.** No, it's not the FBI's policy to record interviews or
20 confessions.

21 **Q.** Now, are there provisions for doing so?

22 **A.** What do you mean by provisions?

23 **Q.** Well, let's mark this next exhibit. I don't have any
24 copies. I would ask you to look at it to refresh your
25 recollection, if we could mark it for identification, please.

1 I will make copies so the Court has it and the prosecutor
2 has it.

3 THE COURT: Have you had a chance to see that?

4 MR. BARTLETT: I have no idea what it is.

5 THE COURT: Share that with the Government.

6 MR. BLOOM: I will.

7 THE COURT: Let's do this. Let's take the noon
8 recess at this time, and we'll clear this up over the noon
9 recess. Have yourself a nice lunch. Keep your books on your
10 chair. Don't discuss the case when you are back in the
11 building, in the jury room. See you around 1:00.

12 (Jury not present.)

13 THE COURT: All right. You may be seated. Is it
14 something -- why don't we do it this way. Let me let you two
15 get together. If copies need to be made, do that. If there's
16 an issue on it, let me know so I can take it before 1:00.

17 MR. BLOOM: Okay. Could I now make the request that
18 if my two brief witnesses show up, that we can interrupt?

19 THE COURT: Any problem with that?

20 MR. BARTLETT: Who are they?

21 THE COURT: I don't know.

22 MR. BLOOM: One would be Haila Silvertrees and the
23 other would be Lavern Troxel.

24 MR. BARTLETT: I have no objection to that, Your
25 Honor.

1 THE COURT: All right.

2 MR. BLOOM: Thank you.

3 THE COURT: We'll be at recess.

4 MR. BARTLETT: You can talk, but not about the case.

5 THE COURT: Yes. Don't discuss the case.

6 (Luncheon recess.)

7 (Jury not present.)

8 THE COURT: All right. You may be seated.

9 Now, the exhibit we are talking about, I understand that's
10 all taken care of.

11 MR. BLOOM: Yes, the marking of the document. I left
12 a -- it was a portion of the FBI regulations. That was marked
13 --

14 THE COURT: This is A-213?

15 MR. BLOOM: 212. No, it must be 213.

16 THE CLERK: A-213.

17 THE COURT: Ready for the jury?

18 MR. BLOOM: Would you please tell the jury that the
19 Court has agreed to let us call two witnesses out of order.

20 THE COURT: All right. The first one is?

21 MR. BLOOM: Haila Silvertrees. The second person
22 will be Lavern Troxel.

23 (Jury present.)

24 THE COURT: All right. You may be seated.

25 Instead of continuing now with Mr. Torres like we have, there

1 will be a witness now called out of turn. That's, of course,
2 approved by the Court.

3 MR. BLOOM: Thank you for accommodating the
4 schedules. I would like to call Haila Silvertrees.

5 THE COURT: All right, Ms. Silvertrees, would you
6 just come forward, ma'am, and raise your right hand and be
7 sworn?

8 HAILA SILVERTREES, called as a witness, duly sworn

9 THE COURT: All right. Just come around and take the
10 witness chair right there.

11 THE WITNESS: Thank you.

12 DIRECT EXAMINATION

13 BY MR. BLOOM:

14 Q. Thank you for coming.

15 A. Uh-huh.

16 Q. Could you fix the microphone in front of your face and
17 speak into it, please.

18 Could you please --

19 A. Is this good?

20 Q. That sounds good, yes, thank you.

21 Have you ever testified before?

22 A. Gosh, I think maybe years ago.

23 Q. Please tell the jury your name.

24 A. Haila Silvertrees.

25 Q. What city do you live in?

1 **A.** Ol ympia.

2 THE COURT: Have her spell the last name for the
3 record.

4 **Q.** Please spell your last name.

5 **A.** S-I -L-V-E-R-T-R-E-E-S.

6 **Q.** Maybe spell the first name too, if you would.

7 **A.** H-A-I -L-A.

8 MR. BARTLETT: For the record, I couldn't hear her
9 answer with regard to have you ever testified before?

10 **A.** I believe I did, yeah, years and years and years ago.

11 BY MR. BLOOM:

12 **Q.** How long have you lived in Olympia? What year did you
13 move to Olympia?

14 **A.** In 2001.

15 **Q.** How old are you?

16 **A.** 65.

17 **Q.** Where did you grow up?

18 **A.** Oh, gosh, Midwest mostly.

19 **Q.** Can you speak a little bit louder?

20 **A.** Midwest.

21 **Q.** Did there come a time when you moved out to the west?

22 **A.** Yes.

23 **Q.** Did you at some point move to Washington State?

24 **A.** Yes.

25 **Q.** Do you remember what year that was?

1 **A.** Oh, I think it was '85, 1985.

2 **Q.** Where did you move to, what city?

3 **A.** Edmonds.

4 **Q.** Where is Edmonds in relation to Tacoma?

5 **A.** It's a little bit north of Seattle.

6 **Q.** Do you have any children?

7 **A.** Yes.

8 **Q.** How many do you have?

9 **A.** Two.

10 **Q.** Is one of your children named Ocean?

11 **A.** Yes.

12 **Q.** Did there come a time -- was he born with the name Ocean?

13 **A.** No.

14 **Q.** Did there come a time when he changed his name officially

15 to Ocean?

16 **A.** Yes.

17 **Q.** Do you remember how old he was then?

18 **A.** I think he was 18.

19 **Q.** Did there come a time that he moved to the Olympia area?

20 **A.** Yes.

21 **Q.** Do you remember about when that was?

22 **A.** I think it was '88 or '89.

23 **Q.** Okay. I want to take you back to a time that was some

24 trouble for you. Did there come a time when Ocean was

25 involved in a serious automobile accident?

1 **A.** Yes.

2 **Q.** Do you remember what year that was?

3 **A.** 2000.

4 **Q.** As a result of that accident, what were the physical

5 injuries to him?

6 **A.** He's a quadriplegic.

7 **Q.** Does he use a wheelchair?

8 **A.** Yes.

9 **Q.** In the year 2000, after his accident, was he in rehab for

10 some time?

11 **A.** Yes.

12 **Q.** Do you know what state this accident was in?

13 **A.** I believe it was Pennsylvania.

14 **Q.** Did there come a time when he was able to come back to the

15 Olympic area?

16 **A.** Yes.

17 **Q.** Sometime in the year 2001 -- well, let me ask you, was it

18 in the year 2001, or was it 2000?

19 **A.** It was in 2000.

20 **Q.** Was he married at the time?

21 **A.** Yes.

22 **Q.** To whom was he married?

23 **A.** Heather Moore.

24 **Q.** Did they have any children?

25 **A.** They have now, yeah.

1 **Q.** That is they together had a child?

2 **A.** Yes.

3 **Q.** Is that a daughter?

4 **A.** Yes.

5 **Q.** And her name?

6 **A.** Karen.

7 **Q.** In the year 2000 when he moved to Olympia, what kind of

8 place was he living?

9 **A.** A friend of his owned a house, and she arranged to have a

10 ramp built to fix the house so he could live there.

11 **Q.** I assume this is not easy for you to talk about?

12 **A.** No.

13 **Q.** It's painful? Did there come a time when you decided that

14 you should move to where he was going to be?

15 **A.** Yes.

16 **Q.** Was it clear that he was going to stay in Olympia, or was

17 that not clear at the time?

18 **A.** I wasn't sure, right when he first moved back to Olympia,

19 I wasn't sure that they were going to stay in Olympia. I

20 think they mentioned possibly moving to Portland. I am not

21 sure.

22 **Q.** So the place where he first moved when he came back to

23 Olympia, you say it was a place fitted to accommodate the

24 wheelchair and his condition; is that correct?

25 **A.** Correct.

1 **Q.** Now, did there come a time when you came down to Olympia
2 to look for a place to stay for yourself?

3 **A.** Yes.

4 **Q.** Do you remember about when that was?

5 **A.** It was the end of March, beginning of April of 2001.

6 **Q.** As a result of the accident, was there some sort of
7 insurance settlement?

8 **A.** Yes.

9 **Q.** Was there any decision made regarding buying a house --

10 **A.** Yes.

11 **Q.** -- with that money? Was a house purchased --

12 **A.** Yes.

13 **Q.** -- for him to live in?

14 **A.** Yes.

15 **Q.** Were you -- first of all, do you remember the month and
16 the year that that happened?

17 **A.** The settlement was towards the end of March, and I believe
18 the house was bought at the same time, right immediately,
19 almost immediately.

20 **Q.** Did you have any official role in the purchase of the
21 house?

22 **A.** Well, I am the trustee of his special needs trust, and I
23 just transferred funds from the insurance settlement.

24 **Q.** Now, when you came down, did you say you came down from
25 Edmonds, is it, to look for a place to stay?

1 **A.** Yes.

2 **Q.** Where were you staying when you first got here? When I
3 say here, when you first got to Olympia.

4 **A.** To Olympia? Well, I stayed in a motel.

5 **Q.** When the house was purchased, was it Conger Avenue?

6 **A.** Yes.

7 **Q.** Did there come a time when you met somebody named Briana
8 Waters?

9 **A.** Yes.

10 **Q.** Do you see her in the courtroom?

11 **A.** Yes.

12 **Q.** Could you point her out, please?

13 **A.** (Indicating.)

14 **Q.** Do you remember the circumstances of meeting her?

15 **A.** Yes.

16 **Q.** Could you please tell the jury.

17 **A.** Sure. One of the times that I came down to Olympia --

18 **Q.** Could you speak into the microphone.

19 **A.** Sorry. One of the times that I came down to Olympia
20 specifically to look for a home because I wanted to move close
21 to my son, I met Briana and somehow it came up that I was
22 staying in a motel, and she said she was going to be out of
23 town for a few days, and she said, don't spend money on a
24 motel, stay in my room while I'm gone.

25 **Q.** Let me interrupt you. Where was her room?

1 **A.** She was staying in a building that was behind Ocean's
2 house.

3 **Q.** How would you describe that building?

4 **A.** Well, it was just a building that was about the size of a
5 two-car garage, just a one-room.

6 **Q.** Did you actually stay?

7 **A.** Yes.

8 **Q.** For about how long did you stay?

9 **A.** Two or three nights, I think.

10 **Q.** Could you describe the furnishings in that one room?

11 **A.** There was a bed.

12 **Q.** Do you want some water?

13 **A.** No, I'm fine, thank you.

14 There was a bed, carpet, rug, book shelves, book shelf
15 that had books, and some clothes folded on it.

16 **Q.** Was it clear to you that a person was living there?

17 **A.** Yeah, it was a bedroom.

18 **Q.** When you stayed there for, I think you said, two nights or
19 three?

20 **A.** Yes.

21 **Q.** What was happening -- was there a main house?

22 **A.** Yes.

23 **Q.** Was that the house -- what was happening with that house?

24 **A.** Well, there was construction going on in the main house to
25 fit it for Ocean, a ramp being built and moving walls and

1 plumbing, and doorways had to be expanded.

2 Q. Was that house livable at that time?

3 A. Oh, no.

4 Q. In particular, the kitchen of that house, the main house,
5 was that under construction?

6 A. I think there was something going on with the stove or the
7 electricity in there.

8 Q. Was there anything going on with regard to counters,
9 changing the level of counters?

10 A. That was changed, yes.

11 Q. Did you -- in the back -- in the back house --

12 A. Uh-huh.

13 Q. -- in the back room where you stayed, where Briana had
14 stayed -- by the way, did she come back and then stay there?

15 A. No.

16 Q. When you left, did she come back and stay --

17 A. Well, I assume she did. I don't know. I wasn't there
18 when she came back.

19 Q. Now, was there running water in the back?

20 A. No.

21 Q. If you needed water, what did you do?

22 A. There was a bathroom right by the back door.

23 Q. Back door of what?

24 A. Of the house.

25 Q. Did you get water there to wash up and drink?

1 **A.** Yeah. There was a shower, yes.

2 **Q.** Now, did there come a time that Ocean actually -- that the
3 construction was done to the point where Ocean was able to
4 move into Conger Avenue?

5 **A.** Yes.

6 **Q.** Do you remember what month that was? Would you remember
7 what season it was?

8 **A.** It was in the summer.

9 **Q.** What year would that have been?

10 **A.** That was all in 2001.

11 **Q.** That same year?

12 **A.** Yes.

13 **Q.** Prior to his actually moving in, in the summer of 2001,
14 was he able to live there at any time given the state of the
15 house?

16 **A.** No.

17 **Q.** So if a person went to see him at the house living there,
18 it would have to be in the Summertime, as you best remember?

19 **A.** Yes.

20 **Q.** Now, did you come to know Briana Waters at all during that
21 period?

22 **A.** A little.

23 **Q.** What was your impression of her?

24 **A.** She was very, very kind to me in a time that was very
25 difficult for me.

1 Q. Do you have a sense of her that you can tell the jury
2 about whether she was a person of peace or, on the other hand,
3 a person of violence?

4 A. Oh, absolutely peaceful, kind, warm.

5 Q. As you sit there now, you know she's accused of having
6 been involved in an arson?

7 A. Yes.

8 Q. Tell the jury what you think of that.

9 MR. BARTLETT: Objection, Your Honor.

10 THE COURT: Sustained.

11 MR. BLOOM: I have no further questions.

12 MR. BARTLETT: Nothing, Your Honor.

13 THE COURT: All right. You may step down.

14 Next witness.

15 MR. BLOOM: LaVerne Troxel. I will go get her.

16 THE COURT: Raise your right hand to be sworn.

17 LAVERNE TROXEL, called as a witness, duly sworn.

18 THE COURT: Just take the witness chair

19 DIRECT EXAMINATION

20 BY MR. BLOOM:

21 Q. Thank you for coming. Would you use the microphone?

22 A. Yes, I will. Is this okay? Can you hear me?

23 Q. Yes, we can. Thank you.

24 Could you tell the jury your whole name and spell it for
25 us, please?

1 **A.** Yes. It's LaVerne Adel e Troxel . That's L-A, capital V,
2 E-R-N-E, Adel e, A-D-E-L-E, Troxel , T as in Tom, R-O-X-E-L.

3 **Q.** Where do you live?

4 **A.** I live in Randle, Washington, which is a little town up in
5 the Cascades.

6 **Q.** About how far from here is that? How long a drive is
7 that?

8 **A.** It's 90 miles to Olympia, so however far it is from
9 Olympia to here on top of that.

10 **Q.** When did you and I first meet?

11 **A.** We met, oh, probably an hour ago out in the hall in the
12 main lobby.

13 **Q.** Have we spoken on the phone?

14 **A.** Yes, very briefly.

15 **Q.** Could you tell us -- how old are you?

16 **A.** 63.

17 **Q.** Could you tell us what you do or have done for a living?

18 **A.** Yes. For almost 40 years, I was a flight attendant, a
19 stewardess before then and then they changed the term, and my
20 final about 10 years, I was an on-board service coordinator or
21 I later changed to on-board service leader, flying basically
22 international flights.

23 **Q.** What particular airline?

24 **A.** I started out with National, which merged with Pan
25 American, and then Delta bought part of Pan American and took

1 personnel, and I went to Delta. So I finished my last 10
2 years with Delta.

3 Q. Have you -- how do you spend your time now?

4 A. I am basically retired, but I say I am going to have to
5 get a job so I can rest because I have several businesses, and
6 I have a farm, which is my greatest love, and I raise horses.

7 Q. Is that in Randle?

8 A. Yes, it is.

9 Q. Is there a mountain in the area of Randle called Watch
10 Mountain?

11 A. Yes, there is.

12 Q. Could you tell the jury -- I don't know if it's called the
13 Watch Mountain Project, but could you tell the jury what
14 happened with regard to Randle and Watch Mountain and Plum
15 Creek.

16 A. Yes, I would be glad to.

17 When I first moved to Randle, I thought it was a very
18 beautiful, scenic and a great place to raise my child. I had
19 no idea about the dangers that existed in that area. I am
20 still very happily entrenched there, and I love it there, but
21 we have massive landslides and we have a lot of flooding.

22 We are in part of Lewis County which you may have heard
23 about the flooding that has taken place just recently there.
24 We are in a valley, and there's a river that runs through the
25 valley, and there is a mountain that sits above the entire

1 town called Watch Mountain.

2 Watch Mountain is basically comprised of volcanic ash
3 which is very unstable. If you pick up the soil, it almost
4 looks like little glass ball bearings. When you have any
5 rain, which is all winter long, we have quite a few landslides
6 that come down off that mountain.

7 In fact, a few years ago we had a landslide that was so
8 phenomenal, it cost almost \$14 million to clear that
9 landslide, and we were trapped in the town for 10 days. It
10 went across the road and they had trucks and cranes clearing
11 the highway 24 hours a day, and they finally had to move the
12 road over because it was still coming down.

13 Well, I was on vacation and I came home in '95, and there
14 was a group of young people that had come into our town in the
15 two or three weeks that I had been gone, and they had
16 established a tree sit in the mountains up on Watch Mountain.

17 At that time, I learned that Watch Mountain was slated to
18 be traded off in a land exchange, which is something -- I
19 don't know if you call it a law or a policy or whatever that
20 can be done with Forest Service land.

21 And what happened was the people in Seattle had approached
22 the Sierra Club and they had given them donations and they
23 wanted no more clear-cuts along the I-90 corridor in their
24 backyard, and they wanted an Alpine park and they were going
25 to trade Forest Service land in different parts of Washington

1 for this I-90 corridor land to create this Alpine park, and
2 the land was basically owned by Plum Creek Timber Company.

3 Plum Creek Timber Company has been called the Darth Vader
4 of the timber industry and has no replanting policies. They
5 just strictly clear-cut everything they do, and they are no
6 longer allowed to even log in Maine because of the destruction
7 they caused there.

8 So Plum Creek was initiating the exchange for old growth
9 timber for this stumped Alpine along I-90, and part of the
10 exchange was the land called Watch Mountain which goes over
11 the entire town of Randle, and the town sits underneath this
12 mountain, and we have landslides off that mountain all the
13 time with trees. Without trees, it would have been
14 devastation.

15 Well, normally, when you do something like this, and you
16 do these land exchanges, they have to go through a series of
17 government processes. One, I think is called a NEPA process
18 where they evaluate safety issues.

19 The timber company was getting anxious to get its hands on
20 this land, and they knew that it would not pass through the
21 safety issues, so they asked senator Slade Gorton, who they
22 had contributed greatly to his re-election campaign, to help
23 them, and he took and put a rider on the omnibus bill, the
24 appropriations bill, in the last day of Congress, to legislate
25 an exchange of this land and bypass all the legal processes,

1 which included the input of the town meetings and the input of
2 the people that lived below this mountain.

3 We knew nothing about it. In the town we had heard
4 whispers and rumors, but we all figured there would be
5 meetings and it could be discussed and at that time the safety
6 issues would be brought up and this would never happen.

7 Well, because it was legislated, our voice was completely
8 removed, and we would not even have known that this had gone
9 through until they started cutting that mountain, except that
10 these young people -- a great deal of them from Evergreen
11 College, including Briana -- came to our town and told us what
12 was going on.

13 And where they were able to do this, the exchange sort of
14 got thrown on the table because there was other parcels
15 involved. One of the parcels had Purple Martin, which is an
16 endangered species, and when the timber company realized that
17 they were not going to be able to log that piece of land
18 because of the Purple Martin in it, they decided to throw
19 everything back on the table and they wanted another piece of
20 property for the piece with the Purple Martin.

21 When that happened, it opened up the entire exchange for
22 argument. So these young people showed up and they set up
23 tree platforms. And you have to realize that Randle is a
24 logging town, and people that come and set up tree platforms
25 are called tree huggers, and basically they are in danger in a

1 Logging town. You've got men that walk around with suspenders
2 and cork nail boots that would knock down a tree hugger in a
3 second and not give it a second thought.

4 So these kids were really putting themselves in harm's way
5 to some extent in this town. I love my town, but nevertheless
6 we do have some shortcomings in this way.

7 Well, the kids -- and I call them kids because I am 63 --
8 these young people started going door to door, and they
9 started telling people about this imminent danger in our town
10 and what was going to happen, and they took a lot of guff.
11 They really did.

12 I saw them take guff in some instances, but they were
13 determined, and they were so diplomatic and they were so quiet
14 and respectful to the townspeople that the entire town, with
15 the exception of a few hard noses who really didn't know the
16 facts, did a total about face, and I was never -- I came from
17 Florida to Washington, so I am not involved in the timber
18 industry, certainly wasn't at that time.

19 I had to read and get up to speed to find out what was
20 going on because I was concerned about my town. But
21 apparently, it's almost unheard of for there ever to be a
22 cooperation between the timber community and quote unquote
23 tree huggers.

24 In this case, there was a very unusual situation, where
25 the townspeople and these young people joined forces to

1 protect this piece of land above our town.

2 The town was -- it was a double-edged sword. The
3 townspeople were fighting to preserve the town from this
4 terrible danger because if this mountain had been logged, the
5 whole thing would have slid down on us and buried us, and we
6 had soil experts that confirmed that and said not "if," it's
7 just a matter of time.

8 So here you have loggers in their suspenders that said
9 loggers on them, and you had kids that were quote-unquote tree
10 huggers, and they were sitting together around campfires
11 planning strategy, and it was the most amazing thing.

12 But the reason that it was so successful, and the reason
13 that these young people were able to get as far as they did in
14 this logging community with this tradition -- I mean, many,
15 many, years of tradition of logging economy -- was because
16 they were so respectful, and they conducted themselves in such
17 a wonderful manner, and they even went to the food bank and
18 helped pass out food. They got involved in community projects
19 at the time they were there. They did all kinds of things.

20 Briana was their film editor. She was doing a documentary
21 at the time, and she filmed all the different phases of what
22 was going on, and she was very conscientious and very
23 diplomatic dealing with some of these older people in this
24 town.

25 And frankly, I've dealt with people all my life, that's

1 what my job has been is dealing with people, and I was so
2 impressed. I was impressed with them as people, but I was
3 impressed with them doubly because of their youth.

4 I cannot imagine that -- and another thing that was so
5 great was there was no violence in this thing. This was right
6 above my town, and it could have really heated up. But it
7 stayed so calm because of the diplomacy of these young people
8 and the way they handled themselves. I was proud to be a part
9 of this, and I just cannot imagine that somebody involved in
10 this, with the depth of dedication that Briana had, could
11 completely do an about face on her personality and do some of
12 the things that she's being accused of here. It just doesn't
13 follow.

14 This woman was a -- I had a chance to observe her over
15 many months. I think I am a very good judge of character.
16 That's what I built my life on. That's what my profession has
17 been, working with people, and I think her character is
18 exemplary.

19 MR. BLOOM: I think I have run out of questions.

20 BY MR. BLOOM:

21 Q. Was it called the Watch Mountain Campaign?

22 A. They called it the Watch Mountain Campaign in some places,
23 and it just depended. You saw it, but the Watch Mountain
24 Campaign, the Watch Mountain Issue, the Watch Mountain
25 Exchange.

1 Q. What was the result, by the way?

2 A. The result was that through the actions of these young
3 people getting the town motivated, that the young people and
4 the townspeople worked together, formed an amazing force. We
5 sent a group to Washington and lobbied. We went to San
6 Francisco and addressed the Sierra Club.

7 The Sierra Club did a total about face when they found out
8 the safety issues involved with logging this mountain above
9 this town and actually fought the exchange.

10 So the whole thing was basically -- Watch Mountain is
11 still Forest Service land, and we still have our trees which
12 will aid us in not having future landslides or massive
13 flooding.

14 MR. BLOOM: Thank you. I don't have any further
15 questions.

16 | CROSS-EXAMINATION

17 | BY MR. BARTLETT:

18 q. Good afternoon.

19 A. Good afternoon.

20 Q. I am going to show you a picture which has already been
21 entered into evidence. It's Government's Exhibit 111 and tell
22 me if you recognize this, ma'am.

23 Do you recognize that, ma'am?

24 A. I don't think so.

25 Q. Try to think back during the Watch Mountain Campaign.

1 When we did a search of this man's house -- his name is
2 Bill Rodgers. He had a resume that indicated he was a
3 consultant for the Watch Mountain Campaign.

4 Do you remember seeing him around?

5 **A.** No, I actually don't, but let me tell you, there was a
6 core group that contributed to the Watch Mountain Campaign of
7 which Briana was one.

8 There was a number of young people, but we did have a
9 bunch of other people that came and went. There were no
10 leaders in this campaign, and some of the people that came and
11 went were rowdy. There was even some young girls that wound
12 up there a little bit nude, and the people that were in
13 Briana's group, sort of -- they agreed that nobody would tell
14 anybody you can't do this or do that, but they were diplomatic
15 in telling them to calm down, to leave, to cover up.

16 So with this influx of people coming and going, this
17 gentleman very well might have been one of the people that
18 came and went and I just don't recognize him. Also, he has
19 facial hair and he might have been shaved while he was there.

20 **Q.** As I understand it, the final compromise for Watch
21 Mountain occurred on November 4, 1999. Does that sound about
22 right?

23 **A.** I am not sure on that.

24 **Q.** Are you aware that in 1998, Ms. Waters was interviewed,
25 and at that point in time she was a student at Evergreen

1 College?

2 Have you ever seen that New York Times article with her
3 interview in it?

4 **A.** No, I don't think so.

5 **Q.** Can you take a look at 740-E?

6 In November 1998, a man named Craig Rosebraugh came up and
7 spoke at Evergreen State College, and a reporter named Robert
8 Sullivan was with him. At the end of the presentation by
9 Mr. Rosebraugh, there was a brief conversation between the
10 reporter and Ms. Waters.

11 **A.** I would have no knowledge of that.

12 **Q.** Let me have you take a look at just the portion of the
13 conversation that was reported in the New York Times involving
14 Ms. Waters, not the whole conversation.

15 Can you look at that, please, for me?

16 In 1998, it was reported that: "The talk was sponsored by
17 EARN, the Evergreen Animal Rights Network." And one
18 individual indicated, "'We all pretty much know Craig and the
19 Liberation Collective,' said Tiffany Tudder."

20 "I" -- referring to the reporter Robert Sullivan -- "asked
21 the EARN members if they supported arsons and mink-farm
22 releases."

23 "'As long as people don't get hurt, I totally support
24 it,' said Briana Waters, a senior."

25 As you read that sentence, "As long as people don't get

1 hurt, I totally support it," it clearly appears that Briana
2 Waters is referring to arsons, that she totally supports the
3 work of arson --

4 MR. BLOOM: Objection, the words speak for
5 themselves, not --

6 THE COURT: Let her read it and say what she gets out
7 of it.

8 MR. BLOOM: I'm sorry?

9 THE COURT: I said, I let her read it.

10 BY MR. BARTLETT:

11 Q. Do you see that?

12 A. I see that sentence. If I had been there, I would have
13 said to Briana: "Do you mean the release of animals, or do
14 you mean in particular arson?" And I would have said to her:
15 "I don't think that that's such a good idea to be doing arson
16 stuff."

17 But there's really -- this isn't very clear to me exactly
18 what she would have meant on that, and as far as releasing
19 animals, I understand something about farm raised animals and
20 how if you release them, they can't survive in the wild, but
21 there are other people who don't.

22 Q. The animals can't survive in the wild?

23 A. Right.

24 Q. Like when you have a mink release, I don't think there's
25 much of a danger of people getting hurt, that's just the

1 animals might not survive. The only thing where individual
2 people would get hurt would be during an arson, wouldn't you
3 agree, Mrs. Troxel?

4 **A.** No, I do not agree. Because if you are releasing animals
5 and somebody -- if someone came and turned my horses loose,
6 and I happened to be on the farm at the time that they were
7 doing so, I would make an effort to stop them from turning my
8 horses loose, and there is a possibility I could be injured,
9 if they were violent people.

10 So, you know, this is a very good sentence for your case,
11 but I don't see where it actually makes the point of your case
12 because it's too -- it's not definite. It's just very
13 wishy-washy.

14 **Q.** Does it surprise you to see those words there?

15 **A.** No.

16 MR. BARTLETT: No further questions.

17 THE COURT: She can be excused?

18 MR. BLOOM: I have one question.

19 REDIRECT EXAMINATION

20 BY MR. BLOOM:

21 **Q.** Having read that article, does that in any way change your
22 opinion of Briana Waters?

23 **A.** No, because you have to take -- you can't take something
24 like this that is said on the spur of the moment with probably
25 not a whole lot of thought.

1 A lot of us say things that we don't actually mean when we
2 are just talking, but when it comes to actual action, there's
3 a big difference between action and talk, and I saw Briana in
4 action, and her action was above reproach.

5 So therefore, a couple of sentences in an article are not
6 enough to convince me that the character of this person is any
7 different than what I think it is.

8 Q. Let me ask this question: Have you ever been a baseball
9 fan?

10 | A. Yes and no.

11 q. Have you ever heard the expression when an umpire makes a
12 questionable call?

13 | A. Kill the umpire?

14 Q. Kill the umpire, yes. How about that? Do you think
15 that's a killer?

16 A. I have been in a baseball field when the stands were up --
17 the people in the stands were on their feet and they were
18 screaming "kill the umpire," and I am sure not one person
19 there has ever killed an umpire.

20 MR. BLOOM: I don't have any further questions.

21 MR. BARTLETT: I have some follow-up, Your Honor,
22 with regard to Ms. Troxel's last statement.

23 | RECROSS-EXAMINATION

24 BY MR. BARTLETT:

25 Q. Ms. Troxel, you just indicated that from what you know of

1 Ms. Waters, she is beyond reproach.

2 Do you remember making that statement to the jury?

3 **A.** What I said was that what I know of her, and I know of her
4 personality, is that she is a wonderful person and her general
5 behavior has been irreproachable. However, she is human.

6 MR. BARTLETT: Could I have the Court Reporter refer
7 back -- read back and see if the words "above reproach" were
8 indicated, please?

9 COURT REPORTER: "Question: I have one question.
10 Having read that article, does that in any way change your
11 opinion of Briana Waters?"

12 "Answer: No, because you have to take -- you can't
13 take something like this that is said on the spur of the
14 moment with probably not a whole lot of thought. A lot of us
15 say things that we don't actually mean when we are just
16 talking, but when it comes to actual action, there's a big
17 difference between action and talk, and I saw Briana in
18 action, and her action was above reproach."

19 BY MR. BARTLETT:

20 **Q.** Thank you. That was the phrase I was referring to.

21 Do you remember making that statement?

22 **A.** Yes, I do, sir.

23 MR. BARTLETT: If I could approach the witness and
24 provide a document previously marked as Government's Exhibit
25 1102.

1 If I could approach, Your Honor.

2 MR. BLOOM: Before the question continues, we would
3 ask that Mr. Bartlett be required to point out to us what he's
4 focussing on. There may or may not be an objection. I just
5 want to know what he's focussing on.

6 THE COURT: The issue is in this document?

7 MR. BARTLETT: I am focussing on the statement that
8 Briana Waters is above reproach, and I want to point out some
9 facts to this witness that might make her reconsider her
10 opinion of Ms. Briana's (sic) character as above reproach.

11 MR. BLOOM: I would like to know what in this
12 document indicates such action.

13 MR. BARTLETT: I will give an offer of proof, Your
14 Honor.

15 THE COURT: All right.

16 MR. BARTLETT: In this document --

17 MR. BLOOM: Well, the offer of proof should not be in
18 front of the jury.

19 THE COURT: Do you want the jury out so we can go
20 through it? It's your witness, and he has a right to
21 cross-examine based on her statement.

22 MR. BLOOM: I have no idea where he's going.

23 THE COURT: Ladies and gentlemen, step out for me.
24 Leave your books on the chair.

25 Do we want the witness to step out also?

1 Ms. Troxel, we will have you step out and wait in the
2 room.

3 (Jury not present.)

4 THE COURT: All right.

5 MR. BARTLETT: The offer of proof, Your Honor,
6 referring to page 3 of this -- first of all, this is from
7 Ms. Waters' website, SupportBriana.org. It was downloaded on
8 February 19, 2008.

9 Looking at page 3, the third paragraph -- I will read the
10 following: "Briana has found two great lawyers, Robert Bloom
11 of Oakland and Neil Fox of Seattle. They will be working
12 extremely hard in the coming months as approximately 100,000
13 pages of discovery will need to be carefully examined."

14 "She" -- referring to Briana -- "and her family are now
15 asking for your help to raise the fees necessary to pay these
16 highly-skilled and seasoned lawyers, as well as helping to
17 offset travel expenses. We have a mountain to climb."

18 My cross-examination will go to the fact that this
19 statement is totally fraudulent; that in fact, since the day
20 he walked into court, Neil Fox has been appointed by the
21 Court, has been paid by the Court, and Ms. Waters has never
22 given him so much as a nickel.

23 Second, in June of last year, Mr. Bloom changed --
24 ultimately -- and he had been retained but now he is appointed
25 by the Court. So she is asking for people to give her money

1 to pay her two attorneys, when in fact that is a lie. That is
2 fraud. She doesn't pay her two attorneys. The two attorneys
3 are being paid by the Court.

4 Therefore, I can confront this woman, who said she is
5 above reproach, with the fact that she is fraudulently trying
6 to obtain money for her appointed attorneys.

7 MR. BLOOM: Well, Your Honor, it's quite astonishing
8 to hear this argument.

9 The fact is, we've had to come to this Court to ask for
10 money to bring witnesses here so that the Court becomes a gate
11 keeper. She, in fact, needs money. In fact, she did retain
12 me at first and she ran out of money. We had a fee
13 arrangement, and she was unable to pay me. So when this was
14 first -- whenever this was first written, it was absolutely
15 true.

16 THE COURT: I don't remember when you came to the
17 case, but that was early on as I recall.

18 MR. BARTLETT: It was always a lie with regard to
19 Mr. Fox. It was always a lie with regard to Mr. Fox.

20 With regard to Mr. Bloom, she had the obligation to keep
21 her website up to date. If she doesn't, she can get on the
22 stand and explain what the big mistake was. But with regard
23 to cross-examination of a character witness, this is exactly
24 on point.

25 MR. BLOOM: Tell you what, let him ask.

1 THE COURT: All right. Bring the jury back.

2 MR. FOX: For the record, I have never been paid a
3 cent by anyone. I have never submitted a voucher.

4 THE COURT: I don't believe Mr. Fox -- he kept saying
5 Mr. Fox. I don't know if you meant Mr. Fox or not.

6 MR. FOX: I have been appointed, but I have never
7 been paid a dime in this case.

8 THE COURT: I don't know what that means.

9 MR. FOX: I mean, I expect at some point to submit a
10 voucher.

11 THE COURT: That's what I thought.

12 MR. FOX: I have never been paid anything.

13 THE COURT: Okay. I think the issue has been
14 settled.

15 MR. BLOOM: Sure.

16 THE COURT: Bring them in.

17 (Jury present.)

18 THE COURT: All right. You may be seated.

19 BY MR. BARTLETT:

20 **Q.** Ms. Troxel?

21 **A.** Yes, sir.

22 **Q.** Are you aware that Ms. Waters has a website
23 "SupportBriana.org"?

24 **A.** No, I am not.

25 **Q.** Could you take a look at what's previously been marked for

1 identification as Government's Exhibit 1102 in front of you.

2 Do you see that?

3 **A.** Yes, sir.

4 **Q.** If you would look at page 3 of that document.

5 MR. BLOOM: May I just interject, for the record, to
6 reflect that we are withdrawing the objection to any of these
7 questions.

8 THE COURT: All right.

9 BY MR. BARTLETT:

10 **Q.** Do you see at the third major paragraph on that page the
11 following: "Briana has found two great lawyers, Robert Bloom
12 of Oakland and Neil Fox of Seattle. They will be working
13 extremely hard in the coming months as approximately 100,000
14 pages of discovery material will need to be carefully
15 examined. She and her family are now asking for your help to
16 raise the fees necessary to pay these highly skilled and
17 seasoned lawyers, as well as helping to offset travel
18 expenses. We have a mountain to climb."

19 Do you see those words?

20 **A.** Yes.

21 **Q.** Did you ever give Ms. Waters money in relation to this?

22 **A.** No.

23 **Q.** Would it change your opinion that she was above reproach
24 if you were to know that Neil Fox, the person she was asking
25 for donations for, is in fact an attorney appointed by the

1 Court and paid by the Court?

2 Would that change your opinion as to her honesty?

3 **A.** No, sir, because probably this wasn't even written by her.
4 This is obviously written by another party, and I think you
5 are grasping at straws. It's just a simple -- maybe a
6 misstatement. Mr. Bloom is getting paid, and she's a working
7 person. You have to have money for these things. It costs a
8 lot.

9 **Q.** Ms. Troxel, could you look at the fourth paragraph where
10 it says "she and her family are now asking for your help"?

11 Wouldn't you agree that anyone reading that, "she and her
12 family are now asking for help," would read that as Ms. Waters
13 herself, not someone on her behalf, but Ms. Waters herself is
14 asking for donations? Wouldn't you agree?

15 **A.** I would agree that she is, but that doesn't mean she wrote
16 this, and if I had read this, I would have given her some
17 money.

18 **Q.** If you were to know a second thing -- if you were to know
19 that, correct, Mr. Bloom was originally retained in this case,
20 but in June of 2007, he switched from being retained to where
21 his fees are also all being paid by the Court, therefore
22 Ms. Waters isn't paying him anything. Would that change your
23 opinion as to her character being above reproach?

24 **A.** No. It makes me think much more highly of Mr. Bloom,
25 though.

1 MR. BARTLETT: No further questions.

2 THE COURT: All right. She can be excused?

3 MR. BLOOM: Let me just ask one question.

4 No, I have no questions.

5 THE COURT: Then you are excused.

6 THE WITNESS: Thank you, Your Honor.

7 MR. BLOOM: I would like to offer this in evidence.

8 MR. BARTLETT: That section, Your Honor --

9 MR. BLOOM: I would like to offer the entire document
10 in evidence.

11 MR. BARTLETT: I only asked for that section, Your
12 Honor. There are other self-serving hearsay statements in
13 there that I object to --

14 THE COURT: I will look at it if it goes beyond that.
15 That was only admitted for one issue?

16 All right. We are back to Mr. Torres?

17 MR. BLOOM: Yes, please.

18 THE COURT: All right. We will have him back.

19 Retake the stand. Remember, you are still under oath.

20 ANTHONY TORRES, previously sworn further testified.

21 DIRECT EXAMINATION - CONTINUED

22 BY MR. BLOOM:

23 Q. I think when we left off we were talking about the FBI
24 regulations, and we were talking about whether or not
25 taping -- making an audiotape of a person being interviewed

1 was possible.

2 Do you remember? I think that's what we were talking
3 about.

4 **A.** The recorded conversations, yes.

5 **Q.** Now, you understood on that day -- we are talking about
6 December 16th of 2005, nine days after the arrests in the
7 Oregon case?

8 **A.** Correct, 2005.

9 **Q.** Did I say 2005?

10 **A.** I was just confirming for myself, 2005.

11 **Q.** You understood that there was a real possibility that
12 Ms. Kolar was going to confess to having burned down the
13 Center for Urban Horticulture; is that correct?

14 **A.** No. Actually, I had no idea what Ms. Kolar was going to
15 come in and tell us. There was no contract ahead of time.
16 There was no agreement on what we thought she was going to
17 say.

18 We were advised by her attorney that she was going to come
19 in and talk about something to do with the conspiracy. I had
20 no idea if she was going to confess to something or just give
21 us some minor details of some involvement.

22 **Q.** In Mr. Friedman's office, the Office of the Department of
23 Justice, Western District of Washington, United States
24 Attorney, I assume there are recording devices; is that
25 correct?

1 **A.** I have no knowledge of that.

2 **Q.** Your office -- your FBI office is not very far from the
3 U.S. Attorney's Office at the time?

4 **A.** No, not very far.

5 **Q.** You had such equipment there; is that correct?

6 **A.** We do have recording equipment in our office.

7 **Q.** There are tape recorders that are manageable to carry, not
8 too big?

9 **A.** I can imagine I could come up with one. I don't know
10 where one is. I don't keep one in my office, but I am sure if
11 asked I could come up with a small recording device.

12 **Q.** Now, in the event that there were going to be -- was going
13 to be a confession, would it be important to be able to
14 tape-record that confession in order to make sure that the
15 person confessing -- that there was good documentation of a
16 confession?

17 **A.** Well, again, it was never a consideration. It never even
18 crossed my mind to record that conversation with Ms. Kolar. I
19 never have before. I never considered it before. So I don't
20 know why I would have considered it this time.

21 **Q.** Well, there are provisions in the FBI regulations for tape
22 recording an interview; is that correct?

23 **A.** Well, I believe, yes, there are some provisions in
24 which -- I believe there's -- I don't know if it's a
25 provision. It's certainly not a criteria, but I could ask,

1 according to the provisions, but it never even crossed my mind
2 because that's not our policy to do so.

3 Q. Take a look at Exhibit A-213, which was introduced and
4 marked before you got off the witness stand.

5 If you could look at the first page of that, section 7-8,
6 recording of interviews. Do you see that?

7 A. 7-8?

8 Q. Yes, the last paragraph on that page.

9 A. Yes, I see that.

10 Q. Does it indicate that the use of recording devices to
11 record the confessions or interviews of witnesses is
12 permissible and authorized by the Special Agent in charge or
13 his or her designees. And then there's a reference to the
14 specific regulation, the so-called MIOG, is that what it says?

15 A. That's what it says, but it's not our practice, sir.

16 MR. BLOOM: I offer in evidence Exhibit A-213.

17 MR. BARTLETT: No objection.

18 THE COURT: Admitted.

19 (Exhibit No. A-213 admitted.)

20 BY MR. BLOOM:

21 Q. This part here, right? That's what I just read, right?

22 A. Let me read it to myself first, so I know what I am
23 agreeing to. Yes.

24 Q. The idea of the FBI's investigative work is to be as
25 accurate as possible in recording events that happened; is

1 that correct?

2 **A.** We were as accurate as possible when we were recording
3 this interview.

4 **Q.** I am sorry, could you say that again?

5 **A.** We were as accurate as possible when we were recording
6 this interview, when we were taking notes in this interview.

7 By recording meaning taking notes, I should clarify.

8 **Q.** Let's clarify that. When you say you were as accurate as
9 possible, was there any dispute at any time between you and
10 Agent Halla as to what exactly the witness Kolar said on that
11 day?

12 **A.** There were some disagreements. There was some confusion
13 between Mr. Halla and myself as to what Ms. Kolar said that
14 day.

15 **Q.** Had there been a tape recording, there would not have been
16 any confusion?

17 **A.** Perhaps.

18 **Q.** When you say perhaps, there would not have been any
19 confusion if her words were on tape; is that correct?

20 **A.** Well, it would have accurately recorded what she would
21 have said.

22 **Q.** Are there regulations, general FBI regulations about
23 making sure your notes are accurate?

24 **A.** I don't know, sir. I am not sure -- I can't think of a --
25 I don't know. I can't think of an actual procedure. If there

1 is one, I am not aware of.

2 What you are showing me here regarding the recording of
3 interviews, these are the guidelines that I'm aware of for
4 recording devices, but we strive to be as accurate as
5 possible.

6 We do our best -- I do my best -- to be as accurate as
7 possible. If there are guidelines, then perhaps you can show
8 them to me.

9 **Q.** Well, you are a supervising agent now; is that correct?

10 **A.** I am.

11 **Q.** And you know the guidelines, right?

12 **A.** Which guidelines?

13 **Q.** All the guidelines. All the FBI guidelines. You know
14 them, don't you?

15 **A.** No, I do not.

16 **Q.** You certainly know that the guidelines require accuracy in
17 both your notes and in your 302s, your FBI reports; is that
18 correct?

19 **A.** That's not what I am saying, sir.

20 **Q.** I am asking you --

21 MR. BARTLETT: Objection. First of all, they are
22 leading. Second, he's not even letting him answer the leading
23 questions.

24 THE COURT: If you give him a question, let him
25 answer.

1 **A.** I think my testimony, sir, is I am not aware of a specific
2 guideline requiring that we are accurate in our interviews. I
3 try to be as accurate as best as possible. I am not aware of
4 a specific guideline or policy. It's common sense, sir, that
5 we would like -- we strive to be as accurate as possible.

6 **Q.** Why would that be? Why would you want to be as accurate
7 as possible?

8 **A.** To record -- well, to be fair.

9 **Q.** There might be a time when you might have to testify in
10 court about the interview that you were giving; is that
11 correct? Or taking, I should say.

12 **A.** Yes, there may be a time when I have to testify.

13 **Q.** Right. So it's important to have an accurate record of
14 what the person said and the questions that he or she was
15 asked?

16 **A.** It is important.

17 **Q.** You don't need guidelines to come to that conclusion,
18 right?

19 **A.** No.

20 **Q.** Now, who was the Special Agent in charge on December 16th
21 of 2005?

22 **A.** We have had several over the past several years.

23 **Q.** Try to remember --

24 **A.** I am trying, sir. In December of 2005 --

25 **Q.** December 16, 2005.

1 **A.** Right. Possibly Mr. Charlie Mandigo, possibly Mr. Pat
2 Adams.

3 **Q.** Now, if the Special Agent in charge is out on some mission
4 somewhere or out to lunch, there is a person who would be the
5 acting Special Agent in charge; is that correct?

6 **A.** In the absence of the Special Agent in charge, there can
7 be a designated Special Agent in charge, yes.

8 **Q.** There is always a person to go to if you know, this
9 witness is going to make a confession, maybe we should tape
10 it; there's always a person in charge to whom you could go to
11 get authorization; is that true?

12 **A.** If I needed authorization for any matter from an SAC in my
13 division, there's always somebody to go to.

14 **Q.** Did there come a time on December 16th -- we are talking
15 only about Jennifer Kolar -- what happened with her on
16 December 16th, that's what I am talking about, of the year
17 2005, her first interview with you. That's the reference
18 point.

19 Now, did there come a time during that -- the early part
20 of that interview that you understood that she was going to
21 confess to one or more crimes?

22 **A.** I remember prior to the interview beginning her attorney
23 stating to us -- and I don't believe Ms. Kolar was in the room
24 at the time -- that she was going to give us information on
25 three arsons. I don't remember if the words "confess" were

1 used, but I know that she was going to give us some
2 information on three arsons that she had knowledge of.

3 Q. That she what?

4 A. Had knowledge of, personal knowledge of.

5 Q. So explain the timing again. When did you learn this?

6 A. If my memory recalls, it was just prior to, I guess you
7 would say, the official start of the interview, on which was
8 the preamble by her attorney, and I don't believe Ms. Kolar
9 was in the room at the time. I think it was more of an
10 administrative matter.

11 Q. Did you or Mr. Friedman or Agent Torres say: "Hey, we
12 better get a tape recorder, there's a confession coming?"

13 A. It never even crossed my mind.

14 Q. That's because if the confession turns out to be something
15 that you eventually don't go with -- let me withdraw that.

16 Statements of witnesses. You eventually put them in a
17 302; is that correct?

18 A. The statements of witnesses, what they say, are reports
19 for the FBI. There's a 302. It's a report.

20 Q. If a person is accused of a crime --

21 MR. BARTLETT: Objection, Your Honor. There's no
22 attempt to even give these open-ended questions. It's just
23 leading, leading, leading. This is direct examination. I
24 would ask again that Mr. Bloom make an attempt to ask
25 nonleading questions.

1 MR. BLOOM: Judge Burgess, it's very clear. There's
2 no question ever, in four years, that the FBI agent involved
3 in the investigation is an adverse witness and we are
4 permitted to lead him.

5 THE COURT: Let's see if I can get the two of you to
6 -- hold down any statements. Ask the question, get a complete
7 answer and then move on to the next one, because over and over
8 and over again -- and if you can quickly get there, do that.

9 MR. BLOOM: That's what I am trying to do, and I get
10 interrupted by Mr. Bartlett.

11 THE COURT: All right. Sometimes I don't know if you
12 need to preface a question before the question comes. Just
13 ask the question and get an answer.

14 MR. BLOOM: That's what I am trying to do, but I get
15 interrupted. I will continue.

16 BY MR. BLOOM:

17 **Q.** Once you prepare your 302, which is the typed report, am I
18 correct?

19 **A.** Yes.

20 **Q.** Is it correct that there's a good likelihood that that
21 statement will have to be turned over to a defense witness if
22 there's a criminal prosecution?

23 **A.** The 302 should be turned over?

24 **Q.** Yes.

25 **A.** Yes.

1 **Q.** So that when you are preparing the 302, one of the FBI
2 regulations, is it not correct, is that you should be accurate
3 with that 302, bearing in mind that defense counsel may get a
4 copy of that?

5 **A.** Again, I am not aware of any FBI regulations stating that
6 we must be accurate in our reports or note-taking.

7 **Q.** Is there any discussion in any FBI regulations to the
8 effect that -- which reminds you that defense counsel may ask
9 for the FBI's written reports?

10 **A.** I don't quite follow the question.

11 **Q.** Is there a regulation that's entitled, "Reporting
12 information that may become testimony," wherein you are
13 instructed that when a Government witness testifies in court
14 for the prosecution, the defense counsel may ask for the FBI's
15 written record of the information brought out in the
16 testimony; the FBI must have such information readily
17 available for production in court?

18 Does that ring a bell to you as one of your regulations?

19 **A.** The process and the procedure rings a bell, and that's
20 what I have always thought in understanding the processes. I
21 am not sure if I learned that from a guideline or if I learned
22 it from a manual or just instruction at the academy. I know
23 that my notes and my 302s are discoverable.

24 **Q.** Discoverable, that's the word, meaning defense counsel
25 such as myself and Mr. Fox may or probably will have that

1 document in order to cross-examine Jennifer Kolar?

2 **A.** I understand.

3 **Q.** Now, did there come a time during that interview that you
4 made notes of what Jennifer Kolar was staying?

5 **A.** The December 16th interview, yes, I made notes.

6 **Q.** Was Mr. Friedman also making notes?

7 **A.** Yes.

8 **Q.** Was Agent Hall also making notes?

9 **A.** Yes.

10 **Q.** Let me show you an exhibit.

11 Will you look at what should be in front of you A-29?

12 **A.** Yes.

13 **Q.** Are those your notes of the December 16th, 2005 interview
14 of Jennifer Kolar?

15 **A.** These are my handwritten notes from that interview on that
16 day.

17 MR. BLOOM: I move those into evidence.

18 MR. FRIEDMAN: No objection.

19 THE COURT: Admitted.

20 (Exhibit No. A-29 admitted.)

21 BY MR. BLOOM:

22 **Q.** Could you look at the page with the Bates number on the
23 bottom right, 15307?

24 **A.** Yes, 15307.

25 **Q.** Do you remember Ms. Kolar saying to you that, "I

1 participated in three arsons, the University of Washington,
2 Cavel West and Susanville"?

3 **A.** That's what my notes reflect. I don't have an exact
4 recall of her saying those words, but since my notes reflect
5 that, then I would -- I don't know the exact words, but she
6 did say something to that effect, yes.

7 **Q.** We would have the exact words if you had a tape recording,
8 right?

9 **A.** Would we have the exact words of what she -- yes, we would
10 have the exact words if we had a tape recording.

11 **Q.** But we don't have a tape recording?

12 **A.** My policy is not to have a tape recording. In my 11 years
13 I have not --

14 **Q.** Why is that? I'm sorry to interrupt.

15 You say that is not your policy. Why is that your policy?

16 **A.** Why is it the FBI's policy?

17 **Q.** Why is that your policy?

18 **A.** I don't know, sir, why that's the FBI's policy not to
19 record interviews. I have always been taught, since my first
20 day -- my first days in the academy. It's what I have always
21 understood from training agents and supervisors. It's our
22 policy not to. I don't know why that is.

23 **Q.** It seems like you'd want to be able to have a tape
24 recorder to show a jury who really wants to know what Jennifer
25 Kollar said exactly on December 16th, right?

1 That would make sense, right?

2 **A.** Well, my testimony and the testimony of agents will tell
3 the jury and others what she said on that day.

4 **Q.** If there's a conflict in your handwritten notes between
5 you and the other agent, then a tape recording, needless to
6 say -- and I won't ask any more questions on this -- there
7 wouldn't be a problem of a conflict if there were a tape
8 recording, right?

9 **A.** Perhaps; maybe there would not be confusion to the words
10 that were spoken.

11 **Q.** Now, as to the words she spoke, she in so many words told
12 you she participated in three arsons, the University of
13 Washington, Cavel West and the California, Susanville, right?

14 **A.** Yes, sir.

15 **Q.** She didn't tell you, did she, at that time, that she'd
16 also tried to burn down the Wray Gun Club in Colorado?

17 **A.** Not at that first interview, no.

18 **Q.** So she said she was involved in three arsons, not four?

19 **A.** During the first interview, I believe that's correct. Her
20 memory was very fuzzy. She was unsure about a lot of things,
21 and I believe at the time it was just those three arsons, yes.

22 **Q.** And that fuzziness or uncertainty would be confirmed if
23 you had a tape recording, right?

24 MR. BARTLETT: Objection, Your Honor, asked and
25 answered.

1 THE COURT: I think you've covered that enough, Mr.
2 Bloom.

3 BY MR. BLOOM:

4 Q. The fuzziness about what she said about the three
5 arsons -- let me withdraw that.

6 Did she ever tell you that day anything about a fourth
7 arson she was involved in?

8 A. I don't recall, no.

9 Q. Now, we did talk earlier about this was clearly a highly
10 intelligent woman; is that correct?

11 A. I would characterize her as an intelligent woman, yes.

12 Q. Now, did there come a time during that interview that she
13 told you about what had happened at Susanville?

14 A. Yes.

15 Q. If you could look at the page marked 15308.

16 A. Yes.

17 Q. Your handwriting says -- am I correct -- this is putting
18 up that page. It says at Susanville; is that correct?

19 A. That's correct.

20 Q. Was she telling you, at the point that you wrote that, who
21 were the people who were involved in the Susanville horse
22 release and arson?

23 A. Well, you have to understand the nature of this interview.
24 It was all over the place. There was at one point when we
25 were so confused, we weren't sure -- I wasn't sure -- if she

1 was saying these people were absolutely there, if they
2 weren't.

3 She was going back and forth from arson to arson. She
4 was -- I wasn't sure -- I mean, the notes reflect that she
5 wasn't sure in certain areas, and to my memory, it was just a
6 lot of confusion, but it does say at Susanville with some
7 names on it.

8 **Q.** Look at the top of that page. It says Susanville, right?

9 **A.** Yes.

10 **Q.** She told you she went down with Joe to California to do
11 it, right?

12 **A.** Correct.

13 **Q.** That was clear, right?

14 **A.** I don't remember it being clear -- whether it was clear or
15 not. Just because my notes say Susanville at the top doesn't
16 necessarily mean that everything below there is going to be an
17 accurate account of what happened at Susanville.

18 **Q.** Let's go through this line by line.

19 **A.** Sure.

20 **Q.** Did you write the word "Susanville"?

21 **A.** At the top of the page, I wrote that, yes.

22 **Q.** Did you write that because now you were talking with her
23 about Susanville?

24 **A.** My understanding, at the beginning of this page, that we
25 were going to talk about Susanville.

1 **Q.** She was talking -- am I correct -- about going down with
2 Joe to California to do it? And that would be Joe Di bee,
3 correct?

4 **A.** Correct.

5 **Q.** That was her former boyfriend?

6 **A.** Yes.

7 **Q.** That was a person who, at the time of Susanville, she was
8 a close friend?

9 **A.** I would assume they were close friends, yes. I guess --
10 yes.

11 **Q.** And that she told you that Joe owed someone a job, an
12 animal rights job; is that correct?

13 **A.** That's what she said.

14 **Q.** That was clear and you wrote that down, right?

15 **A.** Well, I mean, that seems to be more clear than anything
16 else in my notes because it has quotations around it. So that
17 would tell me those were her exact words. If there's a place
18 in my notes I put quotation marks, then that's how I remember
19 later those were her exact words.

20 **Q.** Then did she tell you that Joe had been asked to cut out
21 fences and release horses?

22 **A.** That's what my notes say.

23 **Q.** And that's what she told you?

24 **A.** Yes.

25 **Q.** Did she tell you she knew Jack, who was dating Chelsea at

1 the time?

2 **A.** That's what she said.

3 **Q.** And that's what you wrote?

4 **A.** That's what I wrote.

5 **Q.** Did she tell you that she thought they were going down to
6 release horses?

7 **A.** Yes, there was -- I can't remember exactly if she
8 thought -- if she was saying to us, I thought we were going
9 down to release horses, her and Joe thought. I wrote I
10 thought we were going down to release horses, so I assume
11 that's what she told us, yes.

12 **Q.** Whatever you wrote, you tried to make it an accurate
13 representation of what she was saying to you and Mr. Friedman
14 and Agent Halla; is that fair?

15 **A.** I tried to make an accurate representation of what I
16 thought she was telling us.

17 **Q.** Okay. Did she say that when they got down, Jack and Joe
18 argued about something, a particular thing you wrote down?

19 Why be vague. "When we got down there, Jack and Joe
20 argued about it now becoming an arson."

21 **A.** Yes.

22 **Q.** Who is Jack, by the way? Is that Meyerhoff?

23 **A.** Yes.

24 **Q.** "Jack had built devices, buckets with" -- I can't read
25 that word. What is that word after "buckets"?

1 **A.** I believe it says "Meyerhoff."

2 **Q.** You've written that under the word "Jack" as an indication

3 that you --

4 **A.** Possibly, possibly.

5 **Q.** And then you wrote "at Susanville," right?

6 **A.** Yes, I wrote that.

7 **Q.** Then there's a list of names; am I correct?

8 **A.** There is.

9 **Q.** Am I correct that she is telling you her best memory of

10 who was at Susanville; is that correct?

11 **A.** Again, her best memory is not very good.

12 **Q.** Sir, was she giving you her best memory of who was at

13 Susanville?

14 **A.** She was trying to.

15 **Q.** Other than your evaluation of it, that's what she was

16 telling you or trying to tell you?

17 **A.** That's what she was trying to tell me, or us.

18 **Q.** Did she tell you Joe was there?

19 **A.** Yes.

20 **Q.** Did she tell you Chelsea, also known as Josie --

21 **A.** I don't want -- you weren't there. You have to understand

22 the nature of this interview. She was thinking out loud. She

23 was confused. At times, she was emotional. I don't want to

24 commit to myself -- to you right now, if I have this name down

25 here, that she's absolutely saying these people were there.

1 **Q.** Well, when she was not sure, she would tell you she wasn't
2 sure, didn't she?

3 **A.** Not every time.

4 **Q.** Take a look. Dan McGowan. Jay, question mark. Not sure.
5 And you wrote "not sure," did you not?

6 **A.** I wrote "not sure" then, but I am telling you, I am not
7 sure of when she told me Joe or Jack or Avalon or Crazy Dan,
8 if she was absolutely sure or not.

9 **Q.** But you didn't write -- go down Crazy Dan and Tubbs,
10 right? Take a look. As to Dan McGowan, Crazy Dan and Tubbs,
11 you have both a question mark and the words that you wrote,
12 "not sure."

13 Is that correct?

14 **A.** What's the question, I'm sorry?

15 **Q.** I will ask it again. When it comes to Dan McGowan
16 (Jamie), Crazy Dan, Tubbs, as to each of those three names,
17 you wrote a question mark and you wrote "not sure."

18 Is that correct?

19 **A.** That's what my notes say.

20 **Q.** Is that correct?

21 **A.** That's what my notes say.

22 **Q.** In fact, when she was not sure, she told you she was not
23 sure and you wrote "not sure"?

24 **A.** Not necessarily, no. There were times when I felt she was
25 absolutely confused and not sure, just by her nature, by her

1 hesitation, by her being emotional, by the overall confusion.

2 It was obvious to us that she was not sure about certain
3 things, and whether she told us she was not sure or not --

4 Q. I am saying, this jury has seen this person sitting just
5 where you are sitting.

6 A. I understand.

7 MR. BARTLETT: Objection, Your Honor, this is
8 argumentative.

9 THE COURT: Question.

10 BY MR. BLOOM:

11 Q. When you spoke to this woman, is this a woman that doesn't
12 have confidence and is not sure? Is that what you are saying?
13 That woman, Jennifer Kolar, is not a confident person,
14 speaking directly on that day?

15 A. During the December 16th interview, she was not confident
16 and she was not sure.

17 Q. And where she was not sure, that is what you wrote in your
18 handwriting?

19 MR. BARTLETT: Objection, Your Honor, asked and
20 answered.

21 THE COURT: He's answered it, so you will have to
22 accept the answer.

23 BY MR. BLOOM:

24 Q. Is there a "not sure" after Joe?

25 A. Are you asking on my notes is there a "not sure"?

1 **Q.** Yes, sir, I am asking you that.

2 **A.** No, there is not.

3 **Q.** Is there a "not sure" after Chelsea (Josie)?

4 **A.** No, sir, there is not.

5 **Q.** As to Darren (Canada) Thurston, is there a "not sure"

6 after that?

7 **A.** No.

8 **Q.** She told you that he, Darren Thurston, he knew that it was

9 going to be an arson, right?

10 **A.** That's what my notes reflect.

11 **Q.** Those are the notes that you want to be as accurate as

12 possible, right?

13 **A.** The notes aren't a transcript of what happened. They are

14 just used to aid my memory later on. Every single word that

15 Ms. Kolar or any subject or witness that I interview -- I am

16 not going to put down every single word that they say in my

17 notes.

18 **Q.** But if they say they are not sure, you put that down

19 because that's important?

20 **A.** I don't know if I would or not.

21 **Q.** Now, at some point she said there, the last one, there was

22 an "un male," meaning unidentified male?

23 **A.** The very last --

24 **Q.** The last person who was at Susanville.

25 **A.** Where it is says "un male, punk kid"?

1 **Q.** That one. Yes. So she couldn't identify the person, but
2 she described him as a punk kid; is that correct?

3 **A.** I don't know how she described him. I don't know if she
4 just said punk kid as in a nickname or she described him as
5 someone would describe in their opinion someone who looks like
6 a punk.

7 **Q.** Did she tell you that at Susanville, the people had camped
8 for three or four days?

9 **A.** Yes, that's what I have in my notes.

10 **Q.** So it's fair to say that you understood if that was true,
11 those are people she'd be able to identify she was with. She
12 wasn't with them for an hour or two. She was with them for
13 three or four days, as you understood it; is that correct?

14 **A.** Well, I don't know if that necessarily means that she
15 would be able to identify them --

16 **Q.** Please answer my question. Did you understand that they
17 were there for three or four days together?

18 **A.** I understood that they camped three to four days prior to
19 the arson.

20 **Q.** You've investigated bank robberies where victims get to
21 see the robbers for 30 seconds or three minutes or five
22 minutes?

23 **A.** A few.

24 **Q.** And there's possible identification problems with a short
25 period of the person being -- a suspect being in the vision of

1 the witness, right?

2 **A.** At times.

3 **Q.** Three four days is about as long as it gets, isn't it, to
4 get to know who's with you?

5 **A.** Well, I don't know if they were all together that entire
6 time for the three, four days. I don't know what happened
7 during those three, four days.

8 **Q.** Did you come to learn that there was a period where she
9 got in the car and went to get gasoline to use at that arson?
10 Did you come to learn that?

11 **A.** I don't recall that specific statement. I don't know
12 that. I don't know.

13 **Q.** Did there come a time that afternoon where you talked to
14 her, you and Agent Halla and Assistant United States Attorney
15 Andrew Friedman, spoke to her about the University of
16 Washington arson?

17 **A.** Yes, we did.

18 **Q.** Was that immediately after you talked about Susanville?

19 **A.** I don't know if it was immediately after. I know we took
20 a few breaks here and there. It was during the same
21 interview.

22 **Q.** The next subject matter that was discussed?

23 **A.** Yes. But I am not sure if it was immediately after. It
24 was the next subject matter.

25 **Q.** Just after you discussed the University of Washington,

1 there was still another discussion about a couple of other
2 matters, right? About Joe Di bee having two airplanes -- I look
3 at page 310 -- Joe Di bee having two airplanes and other things
4 about Joe Di bee, as somebody who was raised Catholic and Joe
5 has a powerful family in Syria, may be involved in the
6 military. That was discussed at the end of meeting; is that
7 correct?

8 **A.** That's correct.

9 **Q.** But before the end of the meeting, you talked about the
10 University of Washington arson; is that correct?

11 **A.** That's correct.

12 **Q.** That was really important to the Seattle office of the
13 FBI, right?

14 **A.** It is an important investigation.

15 **Q.** Now, by the time that subject came up, you knew that she
16 was confessing to crimes; is that correct?

17 **A.** Yes.

18 THE COURT: Mr. Bloom, let me stop you there as we
19 get into the University of Washington matter to take the break
20 and then let you deal with that situation. Take your
21 afternoon break. Don't discuss the case. Leave your books on
22 the chair. I will have you back in here in about 15 minutes.

23 (Jury not present.)

24 THE COURT: Then we'll be in recess. Same
25 admonition, don't discuss the case.

1 THE CLERK: All rise. Court is in recess.

2 (Afternoon recess.)

3 THE COURT: All right. You may be seated.

4 Ready? Bring them in.

5 (Jury present.)

6 THE COURT: All right. You may be seated.

7 Mr. Bloom.

8 MR. BLOOM: Sure.

9 BY MR. BLOOM:

10 **Q.** We were about to talk about what Jennifer Kolar told you
11 on December 16th of 2005, but just one preliminary question.

12 You understood that she had about nine days to think about
13 what she was going to say, nine days after the arrest of the
14 people in the Oregon case, right?

15 **A.** There was about a week before.

16 **Q.** December 7th and December 16th, a little over a week?

17 **A.** Yes, a little over a week.

18 **Q.** So when she told you -- you asked her about the University
19 of Washington Center for Urban Horticulture, she told you
20 about somebody named Peaches, a tall, lanky, blonde guy. I
21 will put up this page of your notes.

22 They will be up here. You can look at page 05103, if you
23 need to. She told you that a tall, lanky, blonde guy from the
24 southwest showed up in Seattle to go scout the University of
25 Washington, right?

1 **A.** Yes.

2 **Q.** Was she clear on that?

3 **A.** You know, I am not sure how clear she was on that.

4 **Q.** If you had a tape, it would be clear, right?

5 **A.** A tape recorder?

6 **Q.** Yes, sir.

7 **A.** If I had a tape recorder, I would know exactly the word
8 she said during the proffer.

9 **Q.** And then she told you who was at the arson, did she not?
10 Did she not?

11 **A.** She told us --

12 **Q.** I am sorry. Go ahead, I'm sorry.

13 **A.** She told us that she was certain there were two people at
14 the arson.

15 **Q.** Now, at this point, she was telling you who was at the
16 arson and we know that because you wrote the words "at arson"?

17 **A.** Well, again, you know, there's differences in my notes and
18 there's differences in Agent Halla's notes, and we can compare
19 those if we need to.

20 But in terms of what she was saying to us, she was
21 certain -- and at one point we asked her, because there was so
22 much confusion, "what are you sure about, regarding the
23 University of Washington?" And she said, "I am sure that I
24 was there and Avalon was there."

25 **Q.** Now, let's get back to the question I asked. You wrote

1 the words "at arson"; is that correct?

2 **A.** I did write those words, yes.

3 **Q.** Aside from conflicts or differences in your notes, and
4 Mr. Friedman's notes perhaps, we don't know. Have you ever
5 seen Mr. Friedman's notes?

6 **A.** No.

7 **Q.** Now, whatever confusion may have -- there may have been
8 between your notes and Agent Halla's notes in the preparation
9 of the typed 302, on the day you were there, the afternoon of
10 December 16, you wrote the words "at arson," right?

11 **A.** I wrote those words.

12 **Q.** And then did she tell you that Avalon had organized -- he
13 was the person who organized the arson?

14 **A.** Yes.

15 **Q.** You put the number one next to Avalon; is that right?

16 **A.** I did put the number one, yes.

17 **Q.** And then she told you that there was another person there,
18 an unidentified female that she called Capitol Hill Girl; is
19 that correct?

20 **A.** No. She said that she was not certain if that person was
21 there or not.

22 **Q.** This is Susanville. Do you see that? What's that say?

23 **A.** Those words say "not sure."

24 **Q.** What's that say?

25 **A.** "Not sure."

1 **Q.** What's that say?

2 **A.** "Not sure."

3 **Q.** Uni versi ty of Washi ngton, do you see any "not sure" there?

4 **A.** No, but --

5 **Q.** Do you see any "not sure" there?

6 **A.** No, sir, I do not see the words "not sure."

7 **Q.** Do you see any "not sure" next to any of those names?

8 **A.** Those words are not on there.

9 **Q.** In fact, she tol d you that person number two -- you wrote
10 the number two; that's your wri ting, the number two?

11 **A.** That's number two.

12 **Q.** And you wrote the words "uni denti fied femal e, Capi tol Hill
13 Girl , " ri ght?

14 **A.** Those are the words I wrote, yes.

15 **Q.** And then you wrote "Crazy Dan guy" and you wrote the
16 number three, ri ght?

17 **A.** Yes.

18 **Q.** And then you wrote "Punk Boyfri end, number four," and then
19 you di d an arrow between the uni denti fied femal e and the Punk
20 Boyfri end to show that's the person she clearly tol d you, the
21 Punk Boyfri end of that woman, was person number four?

22 **A.** No.

23 **Q.** She di dn't tell you that, but you put the number four
24 there, ri ght?

25 **A.** I di d put the number four there.

1 **Q.** And there's a number five and it says "me," and that means
2 Kolar, right?

3 **A.** Yes.

4 **Q.** Then she went on to say, the night of the arson somebody
5 met at the GreenLake bar to coordinate?

6 **A.** Yes.

7 **Q.** And what she told you is these are the five people that
8 met at that GreenLake bar to coordinate?

9 **A.** No, that's not what she told me.

10 **Q.** You are saying she was unsure, right?

11 **A.** I am saying she was unsure other than herself and Avalon.

12 **Q.** Now, did there come a time, jumping ahead to August of
13 2007, about six, seven months ago, do you remember -- I don't
14 know if you were present.

15 Did you come to learn that Mr. Bartlett, right here --
16 that he interviewed Jennifer Kolar?

17 **A.** I was not present during that interview.

18 **Q.** Did you come to learn that he had interviewed Jennifer
19 Kolar on August 15th of 2007?

20 **A.** I don't know that for sure. I don't know.

21 **Q.** This is in evidence. This is Exhibit A-67.

22 Could you read the highlighted part, please?

23 **A.** Paragraph 2?

24 **Q.** Yes.

25 **A.** "In preparing for Waters' upcoming trial, I met with

1 Jennifer Kolar and Michael Martin on Wednesday, August 15,
2 2007, to review the questions I anticipated asking her.
3 Toward the end of the interview, we reviewed Kolar's memory of
4 her first interview with federal law enforcement agents on
5 December 16, 2007. Kolar indicated she remembered the
6 interview and believed that, when discussing the University of
7 Washington arson at the end of the interview, she identified
8 Bill Rodgers (Avalon), herself, Capitol Hill Girl, a punk male
9 whom she believed might be Capitol Hill Girl's boyfriend, and
10 Crazy Dan as people she believed had participated. "

11 **Q.** So she apparently -- let me go to page 2 of that
12 declaration by Mr. Bartlett.

13 Could you read that line, please?

14 **A.** The last line?

15 **Q.** I declare.

16 **A.** Yes. "I declare under penalty of perjury that the
17 foregoing is true and correct."

18 **Q.** Dated?

19 **A.** Dated this 27th day of August, 2007.

20 **Q.** That's 10 days -- I am sorry -- 12 days after Mr. Bartlett
21 interviewed Ms. Kolar, he filed this, he prepared and signed
22 this affidavit?

23 **A.** I am not sure when -- I don't know. I wasn't there, so I
24 am not sure when the interview took place. If you are saying
25 it's 10 days before, I don't know.

1 **Q.** In fact, Ms. Kolar stated to you on December 16th that
2 one, two, three, four, five -- those are the five people who
3 did this crime, didn't she?

4 **A.** No, she did not.

5 **Q.** And why would Mr. Bartlett report that that's what he told
6 her on the 15th of August, if that were not true?

7 **A.** I don't know. The part you have highlighted here is
8 believed, and there's no certainty in this, that she believed.
9 This is not my affidavit, sir. I did not participate in the
10 interview prior to this with Ms. Kolar. I don't have any
11 knowledge of what happened or what was said in that interview.

12 **Q.** Does this in any way refresh your recollection, looking at
13 Exhibit A-67, as to in fact she told you those are the people
14 who committed the crime?

15 MR. BARTLETT: Objection, Your Honor. We've gone
16 over this 50 times. This is my affidavit --

17 THE COURT: Last time, I guess.

18 BY MR. BLOOM:

19 **Q.** Does it refresh your recollection?

20 **A.** My notes from December 16th refresh my recollection.

21 **Q.** You say your notes?

22 **A.** Refresh my recollection.

23 **Q.** These babies right here, right?

24 **A.** That's correct.

25 **Q.** Was I there?

1 | **A.** At the interview?

2 | Q. Yes.

3 | A. No.

4 Q. Did I tell you to put one, two, three, four and five next
5 to these names?

6 MR. BARTLETT: Objection, argumentative.

7 THE COURT: This is argumentative now. You will get a
8 chance to argue to the jury.

9 MR. BLOOM: Fair enough.

10 | BY MR. BLOOM:

11 Q. Going back to some of the initial questions I asked, it's
12 important, FBI regulations and common sense tells you that you
13 want to be accurate in your notes, and you want to be accurate
14 in your typed record?

15 | A. Yes.

16 Q. Did you do everything you could to be accurate in your
17 writing these words and these numbers on December 16th, the
18 very day she was talking, you were writing?

19 A. I did my best to write down what I thought she was telling
20 us, and what was most accurate was using this as a guide to my
21 memory, for my memory in preparation for the FD-302.

22 Q. Now, did there come a time when you and Agent Halla
23 prepared a 302 that reflected what had happened at the
24 December 16th interview?

25 A. Yes.

1 **Q.** When did you do that?

2 **A.** When did I prepare the 302?

3 **Q.** Yes, sir.

4 **A.** Apparently -- and I have no recollection of this -- on a
5 Sunday. I would have to review -- I believe it was the 18th,
6 two days after the interview, I initiated a draft of that 302.

7 **Q.** All right. Was Agent Hall with you?

8 **A.** No, he was not.

9 **Q.** How did you prepare it? What instrument did you use to
10 prepare it?

11 **A.** The 302, my desktop.

12 **Q.** A computer?

13 **A.** That's correct.

14 **Q.** Do you have what's called a macro for preparing 302s?

15 **A.** Yes, it's an FD-302 macro.

16 **Q.** Could you explain to the jury what a macro is, please?

17 **A.** A macro is a preloaded form, if you will, in which -- if I
18 want to generate a 302, there are some fields that I populate,
19 if you will, like the date, time, location. And then that is
20 captured on certain parts of the FD-302, and then I can go
21 into my narrative.

22 **Q.** Now, you typed some words into that macro form; is that
23 correct?

24 **A.** I typed some words into that macro form -- are you talking
25 about the initial population of the form or the text?

1 **Q.** Whatever. Tell us what you did.

2 **A.** Okay. On the 18th of December, two days after the
3 interview, I initiated an FD-302 macro. One of the very first
4 things you do is, it asks you what date the investigation
5 happened on or the interview happened on.

6 It asks you to fill in the location, just certain basic
7 information like that. Then it brings you down to almost a
8 free form area where you can type a narrative of what
9 happened. On December 18th, I at least started that macro
10 process.

11 **Q.** When you started the macro process, there came a time,
12 whatever time that was on that Sunday, that you stopped,
13 right?

14 **A.** Yes.

15 **Q.** And did you save that document?

16 **A.** I must have saved that document.

17 **Q.** You wouldn't do otherwise?

18 **A.** Exactly.

19 **Q.** You don't want to duplicate your work?

20 **A.** No.

21 **Q.** You saved the document. When you save it, did you save it
22 within your computer?

23 **A.** Yes.

24 **Q.** Is that a desktop or laptop?

25 **A.** No, it's a desk computer.

1 **Q.** Did the document -- what word processing system do you
2 use?

3 **A.** At that time, I don't know. I can't remember if it was
4 Word Perfect, maybe Word Perfect. I can't remember.

5 **Q.** Could you speak a little louder, please.

6 **A.** At that time, I don't know if it was Word Perfect or not.
7 I believe it was Word Perfect, but we switched. I am not
8 sure. I don't remember.

9 **Q.** You titled the document and you hit save, right?

10 **A.** Yes.

11 **Q.** And then did you upload it to the FBI computer?

12 **A.** What do you mean by upload?

13 **Q.** Did you send it anywhere?

14 **A.** Well, I saved it, which would have saved it on my hard
15 drive of the computer. I don't know if I sent it anywhere. I
16 may have emailed a draft to Agent Halla, but I don't know. I
17 know I saved it.

18 **Q.** You saved it to your hard disk on your desktop, correct?

19 **A.** Yes.

20 **Q.** So it should be there today?

21 **A.** No, it's not there today.

22 **Q.** Why not?

23 **A.** Because eventually, when it's uploaded as you say, then
24 it's taken off our desktop hard drive, and I don't know what
25 happens to it, actually, but it's off the hard drive and then

1 uploaded.

2 **Q.** If you were to give your hard drive to an expert, is it
3 your understanding that what -- the first thing you wrote, the
4 first macro you wrote, the first population of the what
5 happened section, that would be able to be reproduced or
6 reproduced by an expert?

7 **A.** It's my understanding that no, that very first draft or
8 even subsequent drafts is not kept anywhere. I am not a
9 computer expert. I don't know our operating systems
10 intimately, but it is my understanding it's not there.

11 **Q.** Would it be okay if you gave us your hard drive so we
12 could have it analyzed? Would you do that?

13 **A.** That is not up to me.

14 **Q.** It's your hard drive?

15 **A.** No, it's not. It's the Government's.

16 **Q.** Would you give them your approval to do it?

17 **A.** If the Government told me -- if the FBI told me to hand
18 over my hard drive, I would. But like I say, that is nowhere
19 near my area of approval or anything.

20 **Q.** It hasn't happened. You have not been asked by either
21 Mr. Friedman or Mr. Bartlett or Attorney General Gonzalez or
22 any of his designees to turn over your hard drive?

23 **A.** No.

24 **Q.** So whatever you first wrote on that hard drive, the very
25 first draft -- is that the right word? Is "draft" a good

1 word?

2 **A.** I believe "draft" is fair.

3 **Q.** Okay. That would reflect -- if somebody had that -- that
4 would reflect just what it was you wrote based on your notes
5 of what happened at that interview, right?

6 **A.** Are you saying if we had a copy of the draft I wrote on
7 that Sunday --

8 **Q.** Yes, sir.

9 **A.** -- we would know what it said?

10 **Q.** Yes, sir.

11 **A.** Yeah, sure.

12 **Q.** Now, there came a time where there were several revisions
13 of that document; of the 302, I mean.

14 **A.** Theoretically, yes. There were several drafts, you know,
15 going back -- you know, Special Agent Halla and I were in
16 disagreement of what was said or what we understood what was
17 said, and so I remember having some, not disagreements, but
18 some discussions about that.

19 I remember having some confusion about that and going back
20 to our notes and our notes differing and our notes not being
21 exactly the same. I don't recall the specifics of what we
22 were confused about.

23 **Q.** Well, your notes were more complete in terms of the names
24 that were mentioned, more complete than Agent Halla's with
25 regard to the names that were mentioned in connection with the

1 Uni versi ty of Washi ngton arson; i s that correct?

2 **A.** I woul d need to refer to Mr. Hall a's notes.

3 **Q.** Okay. Let me show them to you.

4 **A.** Okay.

5 **Q.** Or they are probabl y up there. If they are not, I think
6 i t woul d probabl y be A-28.

7 MR. BARTLETT: Your Honor, I have no obj ecti on to
8 these notes bei ng admi tted ei ther.

9 MR. BLOOM: I haven't offered them. I may offer
10 them. I woul d ask Mr. Bartlett not i nterrupt my questi oni ng.
11 I am offeri ng somethi ng duri ng my exami nati on. I think i t's
12 i mproper.

13 THE COURT: Let's stay on track and get to the
14 questi ons and stop the bi ckeri ng here. There's no need for
15 that.

16 I wi ll gi ve you my copy whi le we are wai ting for the Court
17 copy.

18 BY MR. BLOOM:

19 **Q.** To save you time, you can look through any part you want,
20 but i f you look at the page where the Bates number i s
21 014005 -- I am sorry, start wi th 004.

22 That's where i t begins about the Uni versi ty of Washi ngton?

23 **A.** Yes.

24 **Q.** Is i t fair to say i n terms of names, your notes are more
25 complete than Agent Hall a's notes? Your names i nclude Crazy

1 Dan guy, and the punk boyfriend of the Capitol Hill Girl?

2 **A.** My notes contain more names than his notes.

3 **Q.** Right.

4 **A.** Which speaks to the whole confusion of the matter.

5 **Q.** Was she confused or were you confused or was he confused?

6 **A.** We both were.

7 **Q.** But, of course, once again, tape recorder, no confusion?

8 **A.** A tape recorder would have recorded the exact words that
9 were said.

10 **Q.** You understand in criminal cases, the burden of proof is
11 always on the prosecution?

12 MR. BARTLETT: Objection, Your Honor, argument.

13 THE COURT: Sustained. I will tell them what the law
14 is.

15 MR. BLOOM: Okay.

16 BY MR. BLOOM:

17 **Q.** Was it in your mind -- withdraw.

18 Now, in fact, when was the completed version, the final
19 version of the typed 302 completed?

20 **A.** I don't know exactly what day it was completed -- that
21 Special Agent finished typing it. It was submitted and
22 finalized for serialization on February 9th.

23 **Q.** How many different versions or drafts of that document
24 were prepared?

25 **A.** Just one version, but I don't know how many drafts.

1 **Q.** I don't want to quibble with words, but there were drafts
2 and then there were changes, another draft would be made and
3 then there may be changes?

4 **A.** There may be, yes.

5 **Q.** How many different times was it changed before you all
6 arrived at the version, the final version?

7 **A.** I have no recollection of how many drafts there were.

8 **Q.** You have no recollection but the computer would tell the
9 story, right?

10 **A.** How so?

11 **Q.** The computer would have each of the drafts; is that
12 correct?

13 **A.** I am not sure if it would or not; I don't know.

14 **Q.** Now, there came a time on February 9th, I think you said,
15 that there was a version -- that was the version of what was
16 going -- did you say serialized?

17 **A.** Yes.

18 **Q.** What does serialized mean?

19 **A.** It's the way -- our supervisor initials the bottom part of
20 the 302, maybe Block stamps it with a date stamp, and then
21 that's when it becomes serialized. It becomes one of the
22 serials for the entire case file. It's given a number. Just
23 like our exhibits are given a number -- the 302s are given a
24 number.

25 **Q.** Now, are you able to -- did you have anything to do with

1 executing the search warrant at Mr. Di bee's ei ther workpl ace
2 or home?

3 **A.** I di d.

4 **Q.** Di d you do an affi davi t in support of getting a search
5 warrant wherein you tal ked about recovery of deleted fi les?

6 **A.** I di d have an affi davi t regardi ng a search warrant in
7 Mr. Di bee's resi dence. I di d parti ci pate in a search of
8 Mr. Di bee's offi ce at work. I don't recall the exact language
9 of that in terms of deleted fi les, if that's what you are
10 aski ng.

11 **Q.** Do you remember in an affi davi t, an attempt to get the
12 search warrant, wri ting that "when a person deletes a fi le on
13 a home computer, the data contained in the fi le do not
14 actuall y di sappear. Rather, the data remain on the hard dri ve
15 until they are overwritte n by new data. As a resul t, deleted
16 fi les or remnants of deleted fi les may reside in free or slack
17 space, i .e., space on the hard dri ve that is not allocated to
18 an active fi le, or that is unused after a fi le has been
19 allocated to a sentinel block storage space for long periods
20 of time before they are overwritte n."

21 Do you remember swearing to the truth of that statement?

22 **A.** No. I don't remember that statement at all. I remember
23 swearing to an affi davi t for a search warrant, but I cannot
24 recall what was in the speci fi c language of that affi davi t.

25 **Q.** Now, when you prepared the typewritte n -- I want to get

1 back to serialization. Serialize kind of means what it says,
2 it has a chronological record of the documents that are filed
3 in the investigation; is that correct?

4 **A.** Yes.

5 **Q.** So that whatever serialization this numbered document is,
6 the 302 reflecting the Kolar interview, it would be in a
7 series of numbers; there would be a number before it, a number
8 after it, a lot of numbers before it, a lot of numbers after
9 it, right?

10 **A.** Yes.

11 **Q.** That's to keep track of the FBI work with regard to a
12 particular investigation, right?

13 **A.** Yes.

14 **Q.** So that even though the date, December 16th, would -- I am
15 sorry, December 18th would appear as the date of
16 transcription --

17 MR. BLOOM: And I move in evidence A-27, which is the
18 302.

19 MR. BARTLETT: For completeness, I think Special
20 Agent Halla's notes should also be, A-28, also.

21 MR. BLOOM: If I may, Judge --

22 THE COURT: When you get a chance to cross-examine,
23 we'll deal with that.

24 MR. BLOOM: That's right. I may do that; I may not
25 do that. But for now, I am allowed to conduct my own

1 examination. Could he please be instructed that he shouldn't
2 be doing that? He shouldn't be interrupting me to offer
3 exhibits in evidence during my examination.

4 THE COURT: I agree. Let's wait the turn. At the
5 same time, we don't need to spend a lot of time on this.
6 Like I said, stop the bickering; let's get to the issue.

7 MR. BLOOM: This is it, Judge. This is about what
8 Jennifer Kolar said --

9 THE COURT: Would you ask the question, please?

10 MR. BLOOM: I am, and I would appreciate --

11 THE COURT: Would you ask the question?

12 MR. BLOOM: -- Mr. Bartlett not interrupting me.

13 I offer into evidence Exhibit A-27, which is the typed 302
14 form.

15 MR. BARTLETT: No objection.

16 THE COURT: This is A-27?

17 MR. BLOOM: A-27, yes.

18 THE COURT: All right.

19 (Exhibit No. A-27 admitted.)

20 BY MR. BLOOM:

21 Q. This is the first page of that document. There's a copy
22 before you. It says date of transcription 12-18-05?

23 A. That's correct.

24 Q. That's not exactly accurate. It really should say 2-9-06?

25 A. My practice, and from what I understand, the process is --

1 and what I've always done from the beginning of my career --
2 the date of transcription is the date I initiate that macro.

3 **Q.** Would you look at page 8 of the document? Right there.

4 **A.** Yes.

5 **Q.** Am I correct that the document I am touching is the
6 document that's finalized, serialized, approximately a month
7 and-a-half, almost two months after the interview; is that
8 correct?

9 **A.** Yes. I don't see a serialized stamp on here, but this
10 seems to be that final version, yes.

11 **Q.** Two months after the interview, you and Agent Halla agreed
12 that it should say, "The night of the arson, Kolar, 'Avalon',
13 and few other individuals met at a bar/restaurant."

14 Is that correct?

15 **A.** Well, I don't know whether we agreed on that paragraph,
16 whether it was early on in that time period or whether it was
17 on February 9th. But eventually, that's what we agreed on.

18 **Q.** That's what you put out there; is that correct?

19 **A.** Excuse me?

20 **Q.** That's what you put out there sometime after Briana Waters
21 had become a suspect?

22 **A.** That's what we put in this 302.

23 **Q.** Yes, sir. That's my question.

24 **A.** If you are asking me -- this 302 was finalized after the
25 name Briana Waters was given to me?

1 **Q.** Yes, sir, that's my question.

2 **A.** Yes, that's true.

3 **Q.** Okay. Is it fair to say what you didn't want to have in
4 your 302 was Avalon, Capitol Hill Girl, Capitol Hill Girl's
5 boyfriend, Crazy Dan? You didn't want to have those names in
6 there when you were going to be accusing, perhaps, Briana
7 Waters; is that correct?

8 **A.** What we wanted in this 302 was what our understanding is
9 the most accurate version, or the most accurate report, I
10 should say, of what was said to us on December 16th.

11 **Q.** On December 16th, referring to your notes, this is what
12 you wrote? You wrote in your handwriting?

13 **A.** This is my handwriting.

14 **Q.** And you wrote it?

15 MR. BARTLETT: Objection, Your Honor, we have gone
16 over this quite a few times.

17 MR. BLOOM: I will move on.

18 BY MR. BLOOM:

19 **Q.** In fact, on the typed form, you didn't say anything there
20 about names, those three names, Capitol Hill Girl, punk
21 boyfriend, (Crazy Dan), not sure.

22 You didn't even put that in there, did you?

23 **A.** That is not in the 302. What was put in the 302, like I
24 said, is the most accurate understanding of what she meant and
25 what she said during her proffer.

1 Q. You are sitting here in front of this jury and you are
2 telling this jury that this is not accurate --

3 MR. BARTLETT: Your Honor, objection, argumentative.

4 MR. BLOOM: I am not finished with my question.

5 BY MR. BLOOM:

6 Q. Your handwriting statement is not accurate? Is that what
7 you are saying?

8 A. Well, it depends on what you mean -- it depends on what we
9 are talking about, the context we are talking about.

10 If you are talking about, is it accurate these are the
11 words I wrote, yes, those are the words I wrote. That's
12 accurate.

13 Is it accurate in what she was telling us in who she
14 believed was at the arson, or not necessarily? What was
15 accurate was she believed and she told us that she was
16 absolutely certain that Avalon and herself were at the arson.

17 If you compare my notes with Mr. Halla's notes, it
18 reflects that confusion.

19 Q. I want to compare your notes about the University of
20 Washington to your notes about Susanville where you wrote "not
21 sure," when she wasn't sure.

22 MR. BARTLETT: This is argumentative, objection.

23 THE COURT: I think we are going back and forth now.
24 That's been covered and answered.

25 BY MR. BLOOM:

1 **Q.** Okay. Now, in fact, at the beginning of that interview,
2 Mr. Friedman said to her, "It's most important to tell the
3 truth." Is that true?

4 **A.** Yes.

5 **Q.** Was it explained to her what she was facing in terms of
6 possible punishment?

7 **A.** I don't think so. I think what was explained to her is
8 that it's most important that you tell the truth. I believe
9 she was given what is called a proffer letter.

10 **Q.** I am sorry, a what?

11 **A.** A proffer letter.

12 **Q.** What's that?

13 **A.** A proffer letter -- a proffer is more of a one-sided
14 conversation, not a confession. It's for someone -- like a
15 pre-interview, pre-confession if you will.

16 It's someone coming to us, coming to the Government
17 saying, this is what I know about a particular crime and
18 perhaps my involvement in that crime.

19 Then it is up to the Government, based on that, whether we
20 decide to file charges or not. It's more of a one-way
21 interview, if you will.

22 **Q.** I am not quite clear on that. Who prepares that kind of
23 document?

24 **A.** The U.S. Attorney's Office does.

25 **Q.** What does the document say more or less?

1 **A.** More or less that you have to be truthful -- I don't know
2 specific -- I don't know the nuances of the legal proffer
3 procedure, other than you have to be truthful, that if no
4 charges are ultimately filed against you, then we cannot use
5 this information against you, from what I understand.

6 **Q.** Does such a proffer say what she's accused of or give any
7 of the facts for which she's accused of?

8 **A.** I don't know. I don't believe so. I would need a copy of
9 that in front of me.

10 **Q.** In general, in other situations, other than Jennifer
11 Kollar?

12 **A.** I don't know. I can't remember.

13 **Q.** So you can't remember if it says -- somebody says that
14 you -- maybe Stan Meyerhoff says you were involved or Joe
15 Di bee says you were involved, or somebody says you were
16 involved in a particular event, does it say anything like
17 that?

18 **A.** I believe no. I am not sure for certain, but I don't know
19 if a proffer letter has those specifics, other than the caveat
20 that she tells the truth and if we decide not to charge her
21 based on the information she gives us, that that information
22 cannot be used against her. It's like a five-paragraph
23 document. I would need it in front of me to --

24 **Q.** So this letter, this proffer letter -- is the word
25 letter -- give me the word if I am not using the right word.

1 Proffer document? Or just proffer?

2 **A.** Just proffer.

3 **Q.** And that's presented to the potential witness, potential
4 cooperating witness?

5 **A.** Yes.

6 **Q.** Through her lawyer -- his or her lawyer?

7 **A.** Yes.

8 **Q.** Is that your recollection of what happened on that first
9 day?

10 **A.** Yes.

11 **Q.** Do people sign that document?

12 **A.** From what I recall, I believe she signs it and possibly
13 her attorney. I don't know. I don't know.

14 **Q.** Think back. That day, what time of day was it that you
15 first saw her?

16 **A.** It was afternoon, late afternoon. I am not sure exactly
17 what time it started.

18 **Q.** Think back. This proffer was given to her?

19 **A.** Yes.

20 **Q.** Did everybody around the table sign it, Ms. Kolar, her
21 lawyer, maybe Mr. Friedman, maybe not the agents, but maybe
22 Mr. Friedman?

23 **A.** I don't recall signing it.

24 **Q.** Do you remember Mr. Friedman signing it?

25 **A.** I don't recall that.

1 **Q.** Did she say to you, myself -- I did it with Avalon and a
2 few other individuals? Did she say that?

3 **A.** No, she said she did it with herself and Avalon. That's
4 what she was certain about.

5 **Q.** You wrote -- what you wrote was, "The night of the arson,
6 Kolar, 'Avalon', and few other individuals met at a
7 bar/restaurant," that's what you wrote?

8 **A.** This is not what I wrote. Mr. Halla prepared this 302.

9 **Q.** Your name is on it; is that right?

10 **A.** My name is on it.

11 **Q.** Right there?

12 **A.** But that doesn't necessarily mean I typed or wrote those
13 words. If it's on page 8, I would submit that I did not write
14 those words.

15 **Q.** So you are putting it on Agent Halla?

16 **A.** I am not putting it on him. He's the one that wrote the
17 document.

18 **Q.** She told you that a few other individuals met at a bar;
19 did she tell you that?

20 **A.** Yes, she did.

21 **Q.** What is index -- tell the jury what indexing is.

22 **A.** Indexing?

23 **Q.** Yes, sir.

24 **A.** Indexing a document, when we submit our FD-302 to our
25 supervisor for serialization, we submit a second copy of it.

1 On the second copy, we would circle or underline a name, a
2 phone number in red ink or pen or pencil, and that would tell
3 the secretary, when she uploads it, to enter whatever is
4 circled, that name or phone number or address, into our FBI
5 database.

6 **Q.** That's a really key part of how the FBI's investigations
7 work, is it not? You get a name, you put it in the database
8 so that you and every other agent in the country can have
9 access to that; is that correct?

10 **A.** Yeah. It is accessible by -- most of the time, it is
11 accessible by -- you mean the 302s are accessible?

12 **Q.** The names that are indexed. Let me make clear what I am
13 asking. Indexing is a very important part of FBI work?

14 **A.** It is very important, yes.

15 **Q.** It is important because indexing means you hear a name and
16 you write it. You write it first in hand and then you put it
17 in a 302?

18 **A.** Yes.

19 **Q.** And then a clerk of some kind, an assistant at the FBI,
20 takes the 302, and does what they call indexes?

21 **A.** Yes.

22 **Q.** And indexing is you look at the name -- in fact, I don't
23 know if it's still true, but you used to put a vertical line
24 through the name to show that that name had been indexed.

25 Is that still the practice?

1 **A.** Perhaps. I don't know.

2 **Q.** Well, you've seen 302s in the recent five years?

3 **A.** Sure.

4 **Q.** That's the way it's done. In some way, there's an
5 indication from the clerk that the clerk has indexed the name?

6 **A.** I am not sure. I usually don't refer to the indexed
7 version of a 302 afterward. I don't know what the checks and
8 balances are in terms of how it's indexed.

9 **Q.** Whatever it is, it's important to get names and if you get
10 -- from the person being interviewed -- and when you get a
11 name, you put it in the 302 with whatever explanatory language
12 you need to do, to explain that this is a name that was
13 mentioned, but she wasn't sure.

14 That's what you do, just so that the names are there so
15 that you and whoever else takes up the investigation
16 understands that she mentioned the name and that you wrote
17 whatever it was that was pertinent about that name.

18 Now, if that's too long a question -- it is a long
19 question.

20 **A.** Yes.

21 **Q.** I will break it down for you. I am sorry.

22 The importance of indexing is that way you know that any
23 name that you heard from a witness gets into the database?

24 **A.** Not any name. I can't sit here and say every name is
25 indexed, but I think the main names are indexed, the reference

1 names are indexed. If it's significant, it's indexed. I
2 can't say that every name is. I am not sure.

3 Q. If somebody is talking about politics and says Fidel
4 Castro, you don't index that, but if there's a mention that
5 this person was or may have been a person who committed the
6 arson, you would put that name down so it could be indexed?

7 A. Yes.

8 Q. She mentioned to you Capitol Hill Girl on December 16th,
9 did she not?

10 A. She did mention the name Capitol Hill Girl.

11 Q. She mentioned the punk boyfriend of Capitol Hill Girl?

12 A. Yes, she did.

13 Q. She mentioned Crazy Dan?

14 A. She did.

15 Q. Yet, none of those names wound up in your 302?

16 A. At this point in the 302, soon after, I don't know how
17 soon -- relatively soon after Jennifer Kollar's interview,
18 there was an entire investigation going on, between
19 California, Oregon and Washington, and we very soon afterwards
20 discovered that those three individuals she named most likely
21 were not involved in the arson. We knew that Crazy Dan was
22 the source. To protect the source, we are probably not going
23 to index that person.

24 We knew that Capitol Hill Girl was another individual,
25 Savoie, who was confessing to crimes down south. And punk

1 boy, eventually we found out who he was and never really
2 suspected him of anything.

3 And the serialization of the 302 happens when we -- I am
4 sorry, the indexing for the 302 happens at the point of
5 serialization and approval. So if it was done on February
6 9th, then we've had several weeks to figure that out.

7 Q. So, in other words, what you are saying is, you came to
8 determine that she was not telling you the truth on December
9 16th; is that correct?

10 A. No, that's not correct. She told us the truth when she
11 said she was certain that herself and Avalon were there, and
12 that she was uncertain about everyone else, we believed her.

13 Q. She didn't say that. She told Mr. Bartlett in August of
14 last year that she identified all those four people and
15 herself; she identified them as the participants. That's what
16 she said then to Mr. Bartlett and that's what your notes tell
17 us.

18 A. I wasn't there for that interview with Mr. Bartlett.

19 Q. Oh, Mr. Bartlett is certainly not going to lie in a sworn
20 document, is he?

21 A. No.

22 THE COURT: Haven't we covered that? Mr. Bloom,
23 haven't you already covered that?

24 MR. BLOOM: I am now impeaching this witness because
25 he is clearly not telling us the truth.

1 MR. BARTLETT: Objection, Your Honor.

2 THE COURT: That's editorializing. He won't agree
3 with you, and I think that's where it's at a standstill.

4 MR. BLOOM: He doesn't have to agree with me. It's
5 up to the jury to figure out once I present what he says and
6 what the facts are.

7 THE COURT: What I am trying to get you to do, sir,
8 is not ask the same question over and over and over again and
9 get the same answer over and over again.

10 MR. BLOOM: Fair enough.

11 THE COURT: All right.

12 BY MR. BLOOM:

13 Q. Now, you understood that this 302 that you finalized,
14 serialized on February 9th, that some defense lawyer of some
15 defendant would very likely discover that, get that document
16 disclosed to him or her; is that correct?

17 A. Yes.

18 Q. So you made a decision not to include Capitol Hill Girl,
19 boyfriend, and Crazy Dan in the 302? You made that
20 decision -- you and Agent Halla together made that decision?

21 A. That's correct.

22 Q. The reason that you made that decision is because that
23 person -- in this case, Briana Waters -- could show a jury
24 that she, Jennifer Kolar, had given different names the very
25 first time she spoke to law enforcement?

1 **A.** No.

2 **Q.** You already told us she was cautioned how important it was
3 to tell the truth?

4 **A.** Ms. Kolar?

5 **Q.** Yes, sir.

6 **A.** Yes.

7 **Q.** Let's move to something else.

8 I want to talk about some other things that Jennifer Kolar
9 told you on that very -- at the very first interview. If we
10 could look at your notes, which is Exhibit A-29, I think. If
11 you could look at the page that's designated 015310, and the
12 reason I use that is because you didn't number the top of the
13 pages 1 through whatever, right?

14 I am not saying you should have. I am just saying they
15 are not otherwise numbered.

16 **A.** Okay. I have A-29 in front of me.

17 **Q.** If you look at page 015310. The last three digits are
18 310.

19 **A.** Yes.

20 **Q.** Okay. Now, use that if you like, but I am going to put it
21 up.

22 Now, did Jennifer Kolar tell you that about a week before
23 the arson, Avalon contacts me about fire at UW?

24 **A.** That's what she told us at this interview. That's what I
25 wrote down.

1 **Q.** At that interview, she didn't say, did she, it was either
2 Avalon or Briana Waters?

3 **A.** No, that was at a later interview.

4 **Q.** In fact, at this interview, she never once mentioned
5 Briana Waters; is that correct?

6 **A.** That's correct.

7 **Q.** If you were to be told that she testified it was either
8 Avalon or Briana Waters who contacted her a week before the
9 fire, that would not be supported by what she told you at the
10 first interview, would it?

11 **A.** I believe she told us that at a subsequent interview.

12 **Q.** Right, after she had made a decision that she was going to
13 try to pin it on Briana Waters --

14 MR. BARTLETT: Objection, Your Honor. This is just
15 argument.

16 BY MR. BLOOM:

17 **Q.** At this first interview, she said it was Avalon who came
18 to her, who contacted her about the fire, right?

19 **A.** That's what I have in my notes, and I am just wondering if
20 --

21 **Q.** Take a look at Agent Halla's notes, if you like.

22 **A.** I would like. Thank you.

23 **Q.** Sure. Anything to refresh your recollection.

24 **A.** Which exhibit is his notes?

25 **Q.** I think that would be A-28.

1 MR. BLOOM: For Mr. Bartlett, let me offer that into
2 evidence.

3 MR. BARTLETT: Thank you, Mr. Bloom.

4 MR. BLOOM: Sure, Mr. Bartlett, any time.

5 (Exhibit No. A-28 admitted.)

6 A. I have his notes in front of me, but I can't --

7 | BY MR. BLOOM:

8 Q. Just take a look at any part of them you want. Perhaps it
9 would help chronologically to try to find -- it's about the
10 University of Washington event.

11 So if you look in that section of his notes and see if it
12 refreshes your recollection about what it was that Jennifer
13 Kolar told you, Mr. Friedman and Agent Halla, about who if
14 anyone contacted her a week before the incident.

15 A. Well, his notes are -- he has Capitol Hill Girl here, and
16 he has Avalon next to a five and six. I think chronologically
17 that's where we would be at a week or two before the arson.

18 I am assuming that's shorthand for maybe that's who
19 approached him -- I don't know. His notes are not --

20 9. Not as complete as yours?

21 A. I don't know if they are not as complete, but they are
22 more fragmented, I should say.

23 Q. That's why the two of you took notes, and perhaps
24 Mr. Friedman also, so that with them all, you could put
25 together a 302, right?

1 **A.** Yeah, Agent Halla's notes and my notes were used to
2 generate the 302.

3 **Q.** Not Mr. Friedman's notes?

4 **A.** I never saw Mr. Friedman's notes.

5 **Q.** So, is there anything -- is it fair to say there's nothing
6 in Agent Halla's notes about what Kolar told you about arson
7 -- I am sorry, about Avalon contacting her about a week before
8 the fire? It doesn't say one way or the other, right?

9 **A.** It doesn't say those words.

10 **Q.** Is there anything in there that refers to that at all?

11 **A.** It says "months before, walked around building."

12 **Q.** Well, the months before refers to when Peaches came to her
13 and the two of them went and scouted or reconned the Center
14 for Urban Horticulture, right?

15 **A.** Yes.

16 **Q.** That's what that refers to?

17 **A.** I think so. Then below that, it just has "A," which I
18 assume is Avalon organizing the fire, because that's what I
19 understood, and then Capitol Hill Girl. You have to ask Agent
20 Halla if that's what he meant.

21 **Q.** So fragmented seems to be a good word, that his notes are
22 more fragmented than yours?

23 **A.** That's my characterization of his notes.

24 **Q.** And that can happen, people take notes in different ways,
25 right?

1 **A.** Yes.

2 **Q.** And your notes, as you learned -- you had five names and
3 numbers next to them, right?

4 **A.** Yes.

5 **Q.** Now, if you look at the same page of your notes, page 310,
6 and it's up there --

7 **A.** Yes.

8 **Q.** -- did she tell you and Mr. Friedman and Agent Halla that,
9 "We all drove from someone else's car. We were all in one
10 car/van and we left someone at the car for lookout"?

11 **A.** That's what I wrote.

12 **Q.** Did you write "van" because she said it could have been a
13 van?

14 **A.** You know, I don't recall exactly. I don't know if I was
15 thinking van or thinking car, but that's what I wrote.

16 **Q.** You were probably real tired, it was the end of the day,
17 and you like to write the letters V-A-N?

18 **A.** That's not what I am saying.

19 **Q.** Why did you write "van"? Because she told you it could
20 have been a van?

21 **A.** Perhaps, I don't know.

22 **Q.** Well, you wouldn't have written it for any other reason,
23 right?

24 **A.** I don't know. I have "car/van." Agent Halla has "car."
25 I remember that's what we were in disagreement about, and

1 that's why "vehicle" ended up in the 302.

2 **Q.** So you went to "vehicle" because you didn't want to put
3 the word "van," V-A-N, in the 302, did you?

4 **A.** It's because we weren't sure.

5 **Q.** But this is one thing that she wasn't sure about, whether
6 it was a car or a van, so she said it could have been a car,
7 it could have been a van, she wasn't sure. Isn't that what
8 happened?

9 **A.** No. I don't know. I don't think so.

10 **Q.** Is it fair to say that you can't give us a reason, other
11 than she might have said it, why you would have written the
12 word "van"?

13 **A.** I cannot give you a reason.

14 **Q.** Did she also tell you on that day -- did she tell you
15 earlier in the interview or did you know otherwise -- did you
16 know Joe Di bee? Did you know the name?

17 **A.** Yes.

18 **Q.** In fact, did you go to see him shortly after December 7th?
19 Did he come in? Were you involved in questioning him?

20 **A.** When he came into the U. S. Attorney's Office?

21 **Q.** Yes.

22 **A.** Yes, I was there.

23 **Q.** He came in, you let him go home and before you knew it, he
24 was long gone, right?

25 **A.** That's correct.

1 **Q.** And so you knew who he was, right?

2 **A.** Yes.

3 **Q.** You knew he had been involved in a number of arsons; is
4 that correct?

5 **A.** That's correct.

6 **Q.** You also knew that -- what did you know about his
7 association with Jennifer Kolar?

8 **A.** Before that meeting or as a result of meeting with
9 Ms. Kolar?

10 **Q.** What have you come to learn about his relationship to
11 Jennifer Kolar?

12 **A.** I have come to learn that they were friends, at times
13 close friends and dated on and off, maybe dated for a
14 six-month period.

15 **Q.** Did you ever see a picture of the two of them together?

16 THE COURT: Mr. Bloom, you are going into the Court's
17 file now.

18 MR. BLOOM: I am sorry, because I am not remembering
19 the exhibit number.

20 MR. FOX: May I help you?

21 MR. BLOOM: What's the photograph?

22 BY MR. BLOOM:

23 **Q.** Now, did you have a discussion with Jennifer Kolar about
24 Joe Di bee?

25 **A.** We asked her some questions about Joe Di bee.

1 Q. Did you ask -- did she say something about Joe Di bee?

2 MR. BLOOM: Exhibit 527, thank you. I am going to
3 put it up on the screen.

4 BY MR. BLOOM:

5 Q. Putting up Exhibit 527 that's in evidence, what does that
6 depict?

7 A. That is a picture of Joe Di bee and Jennifer Kolar.

8 Q. This is also Jennifer Kolar?

9 A. I believe so.

10 Q. Was that seized either at Di bee's work or home?

11 A. I do remember seeing this before. I believe it was taken
12 from his residence, not his office.

13 Q. Did there come a time when his name came up with Jennifer
14 Kolar on December 16th of '05, in connection with the UW
15 arson?

16 A. Did he come up as -- when we were discussing the UW arson?

17 Q. Yes, sir, that's my question.

18 A. Okay. It's not one of the names. I remember asking -- I
19 think we asked if he was there or not, and I think she said
20 she wasn't sure, or no, she wasn't sure, or -- there it is.

21 Q. There it is.

22 A. Joe wasn't there, not sure.

23 Q. Joe wasn't there, and she said not sure of that, right?

24 A. Uh-huh.

25 Q. This guy right here, right?

1 **A.** Yes, that's Joe Di bee.

2 **Q.** Her boyfri end?

3 **A.** Uh-huh.

4 **Q.** She wasn't sure if he was there or not?

5 **A.** Well, she wasn't sure -- she had characterized him as the

6 grandfather of a lot of things in the movement, providing

7 materials, providing maybe money, providing equipment for

8 direct actions. So I have some recollection that she wasn't

9 sure if he had provided some tools or --

10 **Q.** I am sorry?

11 **A.** Some tools or some equipment.

12 **Q.** How about providing himself, picking her up and going to

13 Susanville and committing an arson with her? How about that?

14 Did he do that, too?

15 **A.** I think that's what she said, that Joe picked her up; I

16 went down with Joe to California to do it.

17 **Q.** To do it, the arson, Susanville, right?

18 **A.** Yes.

19 **Q.** She said, when discussing the University of Washington

20 arson, she said she wasn't sure if he was there?

21 **A.** Right. That's not what I am saying.

22 **Q.** No, I am asking you. Withdrawn. Please answer. I'm

23 sorry.

24 **A.** I am not saying that that specifically-- that those words

25 "not sure" means she's saying she's not sure he wasn't there,

1 rather than not sure he provided some kind of assistance,
2 whether it's there or not.

3 **Q.** It says, the words you wrote, "Joe wasn't there, (not
4 sure)." That's what you wrote. It wasn't about providing
5 assistance. The question was, was Joe Di bee there, and she
6 said he wasn't there, but I am not sure of that.

7 **A.** No, I am not sure that's what she said. I am not even
8 sure that's what the question was. The notes aren't a
9 transcript of the interview. They are just used to aid my
10 memory later.

11 **Q.** You know to this day that Jennifer Kolar has not
12 identified Lacey Philabaum as being at that incident, the
13 University of Washington? You know that, right?

14 **A.** Yes.

15 **Q.** And you know, as we've said, that she, Kolar, is a very
16 intelligent person?

17 **A.** She is, yes.

18 **Q.** With lots of responsibilities that require intelligence
19 and memory and the kinds of skills that intelligent people
20 have?

21 **A.** I would say so.

22 **Q.** Did it occur to you that she was perhaps covering for Joe
23 Di bee when she said he wasn't there, not sure?

24 **A.** I had no reason to believe that.

25 **Q.** Now, Joe Di bee, she described him; is that correct? As

1 the interview went on, if you look at the bottom of the page.

2 **A.** Yes. I remember -- the majority of the interview had
3 concluded and we were wrapping things up, and we knew
4 Mr. Di bee had fled the country and we were asking her some
5 intelligence questions that may help us track him down.

6 **Q.** She told you he had two airplanes?

7 **A.** Yes.

8 **Q.** And he would fly to -- could you read --

9 **A.** I think that refers --

10 **Q.** I can't read them, fly to?

11 **A.** I think that refers to California, New Mexico, Canada,
12 often.

13 **Q.** And he was raised Catholic, or she was?

14 **A.** I believe that refers to he was raised Catholic.

15 **Q.** Am I correct that you came to learn that they committed
16 the crime at Susanville five months later together?

17 **A.** Yes.

18 **Q.** That was one month after the disaster of September 11th;
19 is that correct?

20 **A.** Yes.

21 **Q.** In the Susanville arson, did you come to learn that they
22 went to Susanville in his car, in Joe Di bee's car?

23 **A.** I believe that's what she said.

24 **Q.** Right, and they didn't go in a rented car. They went in
25 his car, a car registered in his name?

1 **A.** I don't know if it's registered in his name, but I believe
2 she said they went down in his vehicle.

3 **Q.** Now, Cavel West, did she talk to you -- if you go back to
4 page 04 of your notes, 15304, when she talked about Cavel
5 West, which she admitted to, right?

6 **A.** Yes.

7 **Q.** Did she tell you she went in either a Subaru or 4-Runner?
8 You can take a look at that page.

9 **A.** Yes, either -- it looks like I have Subaru crossed out,
10 and then a 4-Runner.

11 **Q.** That was Joe Di bee's car, right?

12 **A.** I assumed -- I believe Joe Di bee drove a 4-Runner, so I
13 think so.

14 **Q.** So at Susanville, he committed the arson with her, right?

15 **A.** Yes.

16 **Q.** At Cavel West, he committed the arson with her, correct?

17 **A.** Yes.

18 **Q.** He was the one who brought the timing devices to Cavel
19 West; is that correct?

20 **A.** My notes say, "Joe brought the timing devices. Went off
21 prematurely."

22 **Q.** This is Cavel West, right?

23 **A.** This is Cavel West.

24 **Q.** And it's an arson, right?

25 **A.** Yes.

1 **Q.** If you also took on 307, did he also tell her -- did she
2 report that he had told her, with regard to the Vail fire,
3 Vail, Colorado -- you remember that, right?

4 Do you remember investigating -- that's part of your
5 investigation, the Vail fire?

6 **A.** It's part of the overall conspiracy, yes.

7 **Q.** She reported that Joe had said to her, "I'm not directly
8 involved in Vail. I may have supplied the equipment"?

9 **A.** Joe said, "I'm not directly involved in Vail. May have
10 supplied equipment." That's what I have in quotes.

11 **Q.** Joe Di bee was a busy guy when it came to these arsons,
12 wasn't he?

13 **A.** He was.

14 **Q.** Joe Di bee is her boyfriend, right?

15 **A.** At one time, they were boyfriends. I can't remember
16 during which arsons they were boyfriend and girl friend,
17 together, but at one time they dated, yes.

18 MR. BLOOM: May we break for the day, please? I have
19 substantial more questions.

20 THE COURT: All right. Then we'll recess for the
21 day. I will have you back here in the morning, hopefully
22 where you are, at 9:00. Don't discuss the case as you go
23 about your business with anybody. Leave your books on the
24 chair. Have a good evening.

25 See you at 9:00.

1 (Jury not present.)

2 THE COURT: All right. You may be seated.

3 Of course, you may step down and you are, of course, not
4 to discuss your testimony.

5 THE WITNESS: Yes, sir.

6 THE COURT: Anything else we need to do?

7 MR. BARTLETT: Not from the United States.

8 MR. BLOOM: No, thank you.

9 MR. FOX: I don't think so.

10 THE COURT: All right. I will see you in the
11 morning.

12 THE CLERK: All rise. Court is adjourned.

13 (The Court recessed to Tuesday, February 26, 2008, at
14 the hour of 9:00 a.m.)

15 * * * * *

16 C E R T I F I C A T E

17
18 I certify that the foregoing is a correct transcript from
19 the record of proceedings in the above-entitled matter.

20

21 /S/ Teri Hendrix

May 5, 2008

22 Teri Hendrix, Court Reporter

Date

23

24

25